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SELECTIONS FROM THE RECORDS OF THE BOMBAY GOVERNMENT.

No. CXXXIV.—New Series.

SELECTIONS,

WITH NOTES,

FROM THE RECORDS OF GOVERNMENT,

REGARDING THE

KHOTI TENURE.

COMPILED BY

G. [illegible] PANDY, Bombay Civil Service.

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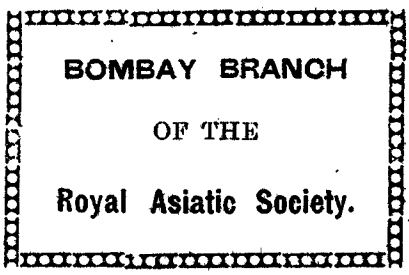
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SELECTIONS FROM THE RECORDS OF THE BOMBAY GOVERNMENT.

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Government Papers

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E. T. CANDY, Bombay Civil Service.

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INTRODUCTION.

The following pages were originally compiled from the records of the Collector's Office at Ratnagiri. They have since been slightly altered, and additions have been made from certain papers which were not at first at the disposal of the compiler.

The attempt has not been made to give a complete history of the Khoti Tenure in all its details; but an important feature has been taken, the relations between the watandar khots and their tenants, and the history of the subject has been traced, showing the succession of facts and opinions. The reason why this particular point has been chosen for enquiry is, that it is *the* question upon which all the unhappy disputes between Government, the khots, and the ryots depend. If this matter be set at rest to the satisfaction of all parties, then it may be confidently asserted that all obstacles to the Survey Settlement will soon disappear.

In an enquiry regarding the relations between the khots and their tenants it is necessary also to discuss the relations between Government and the khots, in order to see how far Government can interfere between the khots and their ryots. This point, therefore, has been kept in view.

The enquiry has been divided into the following parts:—

Part I.—Period before the accession of British Rule.
Part II.—1818—1828.
Part III.—1828—1848.
Part IV.—1848—1858.
Part V.—1859 to the present time.

In conclusion, the natural inferences which arise from the foregoing history have been pointed out, and the outlines of a remedy suggested.

E. T. C.

KHOTI TENURE.

PART I.

The definition of the word "Khot" in Molesworth's Dictionary is "A renter of a village; a farmer of land or revenue; a farmer of the customs, also a contractor or monopolist *gen.* 2.—In some provinces an hereditary officer whose duty it is to collect for Government the revenue of the village, also an officer *appointed* for this office. 3.—A tribe, or an individual of it, of Brahmans in the Southern Konkan, otherwise called जवळ." The last meaning is apparently a metonymical trope. As most of the khots in the Southern Konkan are Brahmans, the word has come to mean a particular tribe of Brahmans. Mr. Chaplin wrote in 1821—"The khots are usually Brahmans;" and Lieutenant Dowell wrote in 1829—"Most of the khots are Brahmans." But there are Mussalman khots, and the most ancient khoti families are said to be Marathas. The Brahmans have come in by sale and mortgage, and by grant in later times, especially under the Peshwas. The other meanings given by Molesworth may be thus summarised: "A farmer of land or revenue, sometimes hereditary and sometimes not." This is the view borne out by the authorities. Captain Wingate, in his printed report (Section 20), quoted Mr. Pelly, who in his Revenue Report for 1819-20 wrote:—"They may be separated into two classes, the watandar khots (as they term themselves) and the Sirkari. The latter are liable at any time to be dispossessed by Government. The watandar khots on the contrary maintain that they possess an hereditary indefeasible right, and that they cannot be dispossessed. . . . . The older inhabitants, however, of the Northern Konkan ridicule the combination of watandars and khots as terms irreconcilable, maintaining that as khoti means only 'makta,' farm or contract, to designate a man an hereditary contractor is an absurdity." It may have seemed an absurdity to the inhabitants of the Northern Konkan, where the khots are *temporary* farmers. In Regulation I. of 1808, Section 18, Clause 2, the khots in Salsette are described as temporary farmers. Mr. Dunlop, in his Report No. 70 of 1822

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Meaning of the word Khot.

Two classes of Khots.

wrote:—"There are no watandar khots north of the Bankot river;" and Mr. Chaplin wrote in 1820:—"In the Northern Konkan the right of a khot to hereditary succession either never existed, as in the Southern Konkan, or else it had been totally disregarded, for at the present day they do not even claim it as a watan, and in the time of the late Government whoever the Government chose was employed as khot." But "in some provinces," that is, in the Southern Konkan, the existence of watandar khots as hereditary farmers was always recognised. They base their title on their sanads. In the well known Ambegaum case the Joint Judge, who had "an accumulation of some hundreds of documents on the record," wrote:—"A consideration of the evidence has led me to the conclusion that originally there was a very material difference between sanadi and non-sanadi khots. A khot naturally had no hereditary right to his khotship, and, unless protected by a specific grant or sanad, he was not secure in the possession of his village. The evidence clearly proves this. The sanad, Exhibit 208, shows that the village had been in the grantee's family 'without hereditary right,' and that it was attached by the Government because the grantee had 'no title deeds.' The attachment is raised, and on payment of Rs. 150 as nazar the village is granted hereditarily. . . . . That non-sanadi khots were removed at the will and pleasure of the ruling power, and the khotships given to others is clearly established by the records of the Peshwa's Daftar. . . . . To secure an hereditary right was therefore the object of the khots in obtaining their sanads; they were frequently sought for previous to undertaking the management of a village, also after sale, but more often after the village had been sometime under management, and had prospered . . . . . That under former Governments an hereditary right was of the greatest value is obvious. Without it there was no security to the khot for his capital, and for the continuance to himself of the profits created by his own enterprise. But, however material may have been the difference between sanadi and non-sanadi khots, the difference has disappeared under the administration of the British Government, and for half a century both sanadi and non-sanadi khotships have been treated alike as hereditary, and have enjoyed the same rights."

Difference between Sanadi and Non-Sanadi Khots.

It is generally admitted that under the British Government no distinction has been made between sanadi and non-sanadi khots, but it is most important to remember, when a discussion is raised as to the way in which the khots were treated under the Peshwa's Government, that this distinction did originally exist.

Extracts from the Peshwa's Records;

The Revenue Commissioner for alienations forwarded with his letter to Government No. 712, dated 3rd March 1860, "a memorandum regarding the khots." This is a collection of extracts from the Peshwa's State Diaries, and contains numerous orders

given by the late Government regarding khotships, but they seem mostly to refer to the districts north of the Bankot river. Thus in paragraphs 4, 8, 13, 17, 25, 26, 35, 39, 47, 48 there are instances of the khotship being resumed from one man and given to another. But there is nothing to show that the khots who were removed were sanadi khots, and the villages in questions seem all to be in the Northern Konkan. Indeed, as shown above, the object of a sanad was to prevent resumption. Many khotships were granted for fixed limited periods: see paragraphs 12, 16, 23, 41, 50. The instance in paragraph 50 is of the village of Punas, and it is expressly ordered that the khotship shall be held by the present managers till the appearance of the watandar khot. In paragraph 43 there is an instance of a khotship resumed by the Peshwa, because the khot offended the village people; but the village was in the Tarf Pachnad, and was not a khoti watan but a khoti makta. In paragraph 48 there is an instance of an order directing the levy of a "charh," or increased assessment, but forbidding the khots to increase their demands on the cultivators. The two khots in question, however, were farmers of four Tarfs for five years—not watandars. The same, with a similar instance, in paragraph 9. At paragraph 57 is an instance of a khot admitting that he was not a watandar, but asking the Peshwa to order the subhedars not to remove him as he had incurred considerable expense in improving the village. At paragraphs 82, 85, 87, 88, 90 are instances of grants of villages to khots, the grant being sometimes distinctly called temporary, and the khots being called "badhekaris," which is the opposite of "watandar." At paragraph 71 is an instance of the Peshwa confirming the sale of a khoti watan, and at paragraph 78 there is the record of a sanad confirming on hereditary tenure the transfer of one-sixth of the *mirasi khoti* of Bandiwadé, Prant Rajapur. There are instances of watandar khots, who had deserted their villages, returning and resuming their watans, sometimes on payment of a nazar: see paragraph 65. At paragraph 54 there is a similar instance. The hereditary khots of Kana (Rajapur) had improved the lands of their village and constructed works of irrigation at a considerable cost. But they deserted their village during the disturbances, and afterwards returned and assumed possession with the consent of the cultivators. The Peshwa granted them a sanad confirming them in possession. There are instances of khoti watans being granted, it being distinctly stated that the former watandar khots were extinct, paragraphs 56, 66, and 67. Not a single instance is to be found of the Peshwa resuming a *khoti watan*. Thus in paragraph 58 it is the khoti, not the khoti watan, which is transferred from one man and given to another. And in paragraph 59 the *khoti* was transferred because the sharers had quarrelled among themselves, and the cultivators were dissatis-

Refer mos[illegible] to Non-Sa[illegible] Khots.

Never to the resumption of Khoti watans.

fied. In these cases the villages were situated in the Tarfs "Need" and "Astumee." There are instances of sanads being given, confirming former grants, and (as the Joint Judge wrote) securing the khot in possession of his hereditary rights: see paragraphs 21, 80.

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on sometimes
st sight of.

The instances of the Peshwa resuming or interfering with the management of a khoti estate never apply to a khoti watan, yet this distinction seems often to have been forgotten. Mr. Dunlop wrote in 1822:—"The unfortunate ryots are asserted to be quite dependent on the khots, which is at least true, according to the present practice; but some representations were at different times made to Poona, when the Peshwa's Government interfered and settled the rates." How is it that there is no record of such interference? Mr. Turquand wrote in 1857 (letter No. 131, 6th February):—"The Peshwa's Government used to alter at short intervals the amount of its demand, and occasionally interfere to limit the khot's demands on the cultivators, sometimes converted a khot's village into a dharekari or ryotwar village, and transferred villages to others without taking the khot's bedawapatr." It is a fact of history, which has been proved and admitted over and over again, that the revenue payable by a watandar khot was not raised except at the time of a general survey. Not a single instance is to be found of a village held in khoti watan being made dharekari or ryotwar; and all the authorities (as will be shown further on) said that the Government did not know what the cultivators paid to a watandar khot. In the course of this inquiry it will be found that many officers recommended that Government should interfere between the khots and the ryots,and sometimes gave, as an authority, the practice of the Peshwa's Government; but, however arbitrary Native Governments may have been, it will always be found that sanads were respected. Unless this distinction between sanadi and non-sanadi khots be kept in mind, there is a danger of wrong inferences being drawn. Thus, to take one instance—In Tazubai's case the Joint Judge wrote (Bombay High Court Reports, Volume III., p. 135):—"What was the footing of the khots in relation to the Peshwa's Government? To answer this question fourteen extracts from the Peshwa's Daftar have been put in evidence, and they show mostly instances of the khot's removal from his khotship at the arbitrary will of the Peshwa's Government; and sometimes for such reasons as failure of the khot to satisfy the increased demands of the Government, oppression of the ryots by the khot, disagreements between two shareholders of the khotship, causing disgust to the ryots." It is easy to guess that the extracts before the Joint Judge were from the very memorandum quoted above. Not one of the instances in question applies to a sanadi khot, and yet in the judgment of the High Court in

the above-mentioned case it is said (p. 150):—"It seems that the Peshwa's Government did not hesitate to eject khots when it suited its convenience," from which statement a person unacquainted with the district would suppose that *all* khots were removable at the pleasure of the State.

Mahal or Subha Sanads

Of course, when reference is made to sanadi khots, it is not intended to include those who held under Mahal or Subha Sanads, which were mentioned by Mr. Dunlop as "not being held to confer a proprietary right under the Peshwa's Government." At page 473 of Borradaile's Reports, Volume II., there is an instance of several sanads of that nature, and the value attached to them.

Origin of the Khots: account by Mr. Pelly.

The origin of the khots is thus described by Mr. Pelly in his Revenue Report for 1819-20:—"The origin of the khots is not easy to be traced, but it is believed they were introduced along with a grain rental no longer time back than about the time of Nizam Shaw. The principal benefit arising from their institution is the facility with which, through them, the revenues are collected; for the more respectable of them are capitalists, who lay out money in bringing new land into cultivation, and may be considered as a description of yeomanry." Mr. Chaplin wrote in 1820:—"They (the khots) pretend to have been appointed by the Moghul Government, and it is said that many of their sanads are very ancient, being of a date anterior to the time of Sivaji, and the Peshwas uniformly respected their rights." And in 1821: "The khots are believed to have arisen during the Government of the Bijapur kings, and their sanads of appointments are said sometimes to specify that the person is constituted khot of the village to restore it to prosperity." Mr. Dunlop wrote in 1822 of the khots of the Salshi Mahal:—"They are said to have had their rise from the distracted state of the province . . . .; the disturbances that attended these changes occasioned the total desertion of many villages, which were therefore farmed to any person who would engage for their revenue." Lieutenant Dowell was of opinion that the khots were introduced to facilitate the collection of the revenue, and to restore the cultivation in villages, which were depopulated and laid waste by continual wars in the district.

By Mr. Chaplin.

By Mr. Dunlop.

By Lieut. Dowell.

These views borne out by the Sanads.

These views are borne out by a perusal of the sanads themselves. In the memorandum above quoted, there are several instances of the watan being granted in order to bring the village under cultivation (see paragraphs 3, 5, 6, 7, 10, 15). Sanads are to be found in which it is stated that the lands of a village are nearly all waste, and the few cultivators who are left have petitioned for a khot, therefore the village is granted as khoti watan, &c., &c.

PART II. 1818—1828.

Accession of British Rule.

The next division of the enquiry must now be entered upon, that is, the period when the territory forming the Southern Konkan came under the British Government. Seven villages belonging to Bankot were ceded by the Peshwa in 1754. Forty-eight villages in the Malwan district were received from the Kolhapur and Wari Governments in 1812-13. The rest of the province came under the British Government in 1817-18.

Malwan Residency Records.

The oldest records that are available are four revenue reports, dated 1st September 1813, 31st December 1814, 1st August 1817, 1st August 1818, from "The Residency, Malwan." These reports of course refer to the district round Malwan (called the Kudal Prant), and, though full of interesting matter, give but little information on the khoti question. Indeed, in the first three reports there is no mention of khots. There seems to have been no person who came between Government and the ryot in the collection of the revenue, except in the Sunderdrug District, where there were 'Havildars,' or, as they were sometimes called, 'Komavisdars.' These men had no specified emoluments, and were mere tax-collectors.

Mr. Hale's description of the Salshi Mahal.

It is not till we come to the 60th paragraph of the revenue report for 1817-18 that mention is found of *khots*. The Resident, Mr. Hale, is describing the Salshi Tarf. He writes:—

> "The zemindars or khots (farmers) as they are called, alluded to in the 50th paragraph, may be continued (when their right to the situation is substantiated) as patells in their respective villages, but as instances occur where some of these khots or zemindars have by farm the right of control over more than one village (sometimes four or five), it will be necessary that one for each should be selected, and for this claimants sufficient will no doubt be found: thus an equitable adjustment of these claims will be formed, and at the same time the enactments of Regulation IV. of 1818 be complied with by providing a responsible Police officer as a resident inhabitant in every one."

The 50th paragraph to which he refers runs thus—"The remainder (of the villages) which are situated towards the ghauts appear not to have undergone any regular assessment, but have been invariably farmed to the principal zemindar of the village, in which case the farmer has had the exclusive control of it, and disposed of the ryots and the lands in whatever manner he found conducive to his own profit, the consequence is that no fixed land-holders are to be met with in those situations, but the cultivation is carried on by temporary residents, who are removed or not according as the

farmer may find it convenient to retain them, and are therefore naturally in a most unpromising condition."

The Resident proceeds in paragraph 56—"Much (improvement) however may ultimately be expected from the change of Government that has taken place, particularly as regarding those villages, which have been usually let to farm—a system at all times pernicious, but in this instance particularly so—and I have therefore endeavoured to remedy the effects of it as early as possible by replacing the former patells where they can be found, and attentively investigating the claims for the lands, which are daily before me, by which means, in course of time, the original and legal proprietors of each village may be established in their former rights, and the knowledge that this restoration will be permanent will be sufficient inducement to the ryots to turn their attention to the improvement and extension of the cultivated lands, and this practice followed by an equitable assessment will, I trust, speedily place these neglected villages upon an equality with the remainder to the palpable advantage of the revenue." He then proceeds to detail a system, "which under the present circumstances appears to me the most eligible as tending to give employment to the former zemindars and the other revenue servants of the late Government." He then describes the Desais and Narkarnies, &c., and how he would utilise them; then turns to the "zemindars or khots" in the 60th paragraph quoted above, and proceeds (paragraph 61):—"Where these zemindars are the exclusive proprietors of the lands in their respective villages, the revenues of each must of course go through their hands nearly in the same manner as before, though, as their cultivators will naturally be protected from any undue exactions, the pernicious consequences of the former system will be avoided; in instances where they are merely sharers, their duty will not extend beyond that of other patells, which is to furnish statements of the proportion of each individual's share of the revenue, from whom it will be levied direct by the Collector."

Summary of Mr. Hale's views.

In considering these extracts it must be borne in mind that reference is made to the Salshi Mahal only. This much seems clear, that in that particular part of the district some of the zemindars or khots were exclusive proprietors of the lands in their respective villages, in which case they had exclusive control over the lands and the ryots: there were only temporary cultivators, no fixed land-holders, but in such villages the Resident opined, "the cultivators will naturally be protected from any undue exactions." How this protection was to be afforded he did not state.

Mr. Dunlop's description of the Salshi Mahal.

While on the subject of the Salshi Mahal it may be well to refer to paragraphs 8 to 14 of Mr. Dunlop's report for 1821-22, which will be noticed in full further on. He says that with the

exception of fourteen kulargi villages along the coast, "the rest of the province (Salshi) has fallen under the management of the khots, some of whom are described as watandars, and others as having acquired the khotship by mortgages of different kinds, for I cannot learn that any have been sold. The first, or watandars, are purely farmers, and are found principally in the neighbourhood of the ghauts." He then shows that the nature of the soil in villages near the ghauts—being chiefly warkas—seems to have favoured the usurpations of the khots, the alternate cultivation and abandonment naturally leading to cultivators being less attached to their ground, "but warkas frequently belongs to particular cultivators as much as batty ground."

We now come to consider several revenue reports and other records, extracts from some of which formed a compilation which guided Captain Wingate in his famous report on the Ratnagiri Collectorate (No. 44 of 1851).

Mr. Pelly's Report for 1819-20.

The first is the revenue report of the Southern Konkan for 1819-20 by Mr. J. H. Pelly,* No. 537 (wrongly written in Captain Wingate's Report, 573.) It is dated 18th December 1820, from the "Southern Konkan Collector's Office," and this from the address of the Government reply (No. 148, 23rd January 1821), seems to have been at Fort Victoria (Bankot). The important part of the report begins at paragraph 8. "From Apta to Salshi Mahal, which is the southern limit of the late Peshwa's possession, the villages are either termed kulargi or khotki. In the khotki villages, though the khot or head of the village can only levy a particular sum from one particular class of ryots, yet with others either occupying new lands, or renting the khot's own, he may make what bargain he pleases. And this naturally leads to an explanation of the only two

Two descriptions of tenure.

descriptions of tenure generally prevalent in this zilla, namely, the 1, Dharekari, and 2, Ardheli.

Dharekari like the Mirasi.

The former of these seems very nearly to correspond with the mirasi of the Deccan. For he cannot be dispossessed so long as he makes good his payments according to the custom of the country, and if he cannot actually sell, he may unquestionably mortgage his property, though it is generally believed he may even dispose of it (which the ardheli cannot). And if the dharekari throws up his lands and emigrates, but returns after a very long but not very accurately defined period, he may resume possession, though if the lapse of years be enormous, at some sacrifices (also not well defined) to the actual occupant. The khot, moreover, ought not of right to exact from the dharekaris one day's labour in eight, which is customary with the other tenure. . . .

* The Bombay Government, in a letter dated 23rd February 1822, to the Court of Directors, quoted Mr. Pelly's report nearly word for word.

The ardheli ryot on the contrary seems much on a footing with the uparis elsewhere. He is the tenant of the khot, or of some other holder of land, as the case may be. He cannot either sell or mortgage what he occupies, because it of right belongs to another, and he only holds it by sufferance. He may be dispossessed either by the owner choosing to take the land into his own hands, or to assign it to some one else, though this latter course would be considered a hardship if the ryot regularly fulfilled his engagements. Those engagements are however mostly annual, and it is therefore obvious the owner of the land might easily effect an ejectment by raising his demands, till the land under a payment of them would not be worth the cultivation. The ardheli ryot who may cultivate rice-land generally pays his landlord half produce in kind, adjusted either by agreement* or actual admeasurement† at the period of harvest, and as the Government assessment is hardly ever so high, a gain, or, in other words, a rent, remains to the landlord. . . . . The ardheli ryot is regarded as every way inferior to the dharekari (mirasi or inheritor), but in none more so than in the obligation he is under of giving his services in aid of the head of the villages one day in eight as above explained."

And Ardheli like the Upari.

Mr. Pelly then shows that the khots had been trying to levy this exaction on dharekaris, which he had forbidden; then describes the enams in the district, then shows that the patels had been merged in the khots, and the khot had the whole revenue settlement and management of the accounts both between himself and the ryot, and himself and Government, and "as his name would seem to imply he may rather be viewed as the farmer of the entire revenue of the village than like the patel elsewhere, the mere agent or receiver of Government." He then gives his opinion as to the origin of the khots (quoted above), and strongly urges on Government to carry out a survey. He recommends that one or two talukas should be undertaken at a time, "and a settlement made for five years, an interval affording time to collect a body of information, sufficient to determine whether any materially different system should be instituted. As it is, I must confess myself unprepared (even could I consider it expedient) to propose any novel proceedings. I would, on the contrary, strongly recommend for a few years to come that the sheristhas, or customs of the country, be closely adhered to, excepting in so far as may relate to the abolition of oppressive and improper imposts, and the correction of abuses. The lands can be measured, classed, and assessed according to the immemorial usage of the country, and while this will give no discontent, a novel, though perhaps on the whole more equitable plan, will be sure to produce

Summary of the rest of the Report.

Survey recommended.

* Called khand. † Called thal.

it. The ryots will be benefited because the extent of the demands on each individual will thus become accurately defined, and easily ascertained in the Collector's office if wrong be done them. . . . . A correction of the assessment and a restoration to Government of their undisputed rights, now fraudulently withheld by the khots, would no doubt be unacceptable to the latter, though the ryot would undoubtedly benefit by the arrangement. At present the villagers are generally much indebted to the khots, and as the ryots can neither read nor write, they are of course wholly at the mercy of the former."

The above lengthy quotations show what was the opinion of the first British Revenue Officer on this question. The important part to notice is that Mr. Pelly thought that there were only two kinds of holders of land:

1. Dharekaris—cultivating their own lands like mirasdars.
2. Ardhelis—occupying new lands or renting the khots' own like uparis, mere tenants-at-will.

Government replies to Mr. Pelly.

The Government replies to Mr. Pelly's report are No. 148, 23rd January 1821, and No. 955, 28th January 1821. In paragraph 3 of the former Government fully accepted the above definition, and it had an important influence on all Government utterances for a long time. Government approved also of Mr. Pelly confining the exaction of veth to the "class on whom alone it ought to fall," (ardhelis). Government admitted the objectionable tendency of the system, by which all the power was centred in the khot, and "the necessity of curtailing his authority or rather of subjecting him to the check and control that prevails elsewhere." Government agreed with Mr. Pelly in deprecating precipitate innovation. In the second Resolution Government likened the khots to the "smaller zemindars in Bengal," and therefore considered a minute enquiry into tenures very important, as, should the Collector for any length of time content himself with settling with the khots, "it is much to be feared that the rights of all the other persons of the agricultural classes may fall into oblivion as they have done in Bengal." The Collector was to "record with precision the number of villages on the khoti plan, and those on the kularak plan, and the rights and interests of all classes in each, whether with regard to the State or to each other." The Resolution proceeds: "Mr. Pelly proposes 'a correction of the assessment, and a restoration to Government of their undisputed rights now fraudulently withheld by the khots,' that is, a complete alteration of the terms on which the khots actually held their farms. Before this is done, it will be necessary to fix what are the rights of Government. This the Governor in Council apprehends will not be easy. Supposing it established that the ryot is to pay one-half the produce to Government (a rule

which cannot always apply), how much of that half is to be left to the khot?" This (it was held) can only be found from former payments, which it would be hard to ascertain.

Effect of custom.

Before leaving Mr. Pelly it should be noticed that though he considered the ardheli a tenant-at-will, yet he did not omit to record that *generally* such a ryot paid one-half the produce to the landlord (and this indeed is the meaning of the word ardheli), and that it would be considered a hardship if the ryot who regularly paid this were ejected.

Captain Ovans' two descriptions of tenure, dharekari and badhekari.

It will be interesting here to compare Mr. Pelly's "two descriptions of tenure" with some remarks made about this time by Captain Ovans, in a letter to Captain Grant, Political Agent at Satara (dated 30th March 1820), in reply to a letter dated 25th October 1819, directing him to make a survey of the western boundaries of the territories of the Raja of Satara. "The cultivators may be divided into two descriptions in the country immediately below the ghauts, that is, dharekaris and badhekaris. The dharekaris are the permanent inhabitants of the villages, and are watandars possessing the right of cultivation by inheritance. The badhekaris are temporary cultivators, shifting about from village to village at pleasure, and usually pay the ardhel, or assessment per kandy."

In the Resolution last quoted from it was stated that the Commissioner in the Deccan would be "requested to use his utmost endeavours to procure as many accounts of the internal management of the district as may be obtainable, and to learn from verbal inquiries among the former renters the principles by which they where guided in collecting the revenue."

Mr. Chaplin's Report of 1821: his informants:

Accordingly Mr. Chaplin, the Commissioner, wrote his Report No. 40, dated 21st November 1821. His endeavours in procuring accounts were somewhat unsuccessful, and before noticing the result of his verbal inquiries, it may be well to remember who his informants were, "the former renters." It is to be supposed that by these were meant *khots*. It may be imagined that they would not give information against the interests of their own class. Mr. Chaplin wrote:—"The khot is the farmer of the village (Captain Wingate quotes this 'as farmer of the revenue'), and is alone answerable to Government for the rent, and the ryots to him. . . . Whatever be the amount of the assessment the khot alone is answerable for it to Government. He farms the lands at that rate, and lets them out to the best advantage to the ryots. In letting the lands he is not guided by the rent fixed by Government for each ryot's land, but gets as much more as he can; nor has the ryot any right to it except upon the terms upon which he can agree with the khot, the only limit to the khot's demand being the fear that the land

His description of the Khoti tenure.

may be thrown up without his being able to find another tenant for it. . . . . The khot and the ryot are bound only by the ties of mutual interest. If the former demands more than the latter can afford to pay, the ryot quits the village in search of a more moderate landlord, and the land lies waste at the loss of the khot, until he can find another cultivator. On the other hand, if the ryot refuses to pay an equitable rent, the khot ejects him, and lets the land to a better tenant. Custom, however, appears to have fixed one-half the produce as the limit of rent, when the khot and the ryot cannot agree on any other settlement. But more than a-half the ain pahani is also a common rate, and in some cases even double the ain pahani is consented to as a hard bargain. The rates, however, are not uniform, but it seems universally acknowledged that one-half of the gross produce is necessary for the expense of tillage and the maintenance of the cultivator. Local usages regulate the rates, which do not seem to be established under any limitations by Government. . . . . Government does not know what they (the ryots) actually pay, nor whether the khot may gain or lose by his farm. . . . . The khot furnishes the ryot with advances as well for cultivation as for expenses. . . . . They look up to him only, and consider him as their sole master and landlord."

Effect of custom.

It is thus seen that Mr. Chaplin considered the ryot (meaning of course Mr. Pelly's 'ardheli,' and not the 'dharekari') purely a tenant-at-will; but it is worthy of remark that Mr. Chaplin, like Mr. Pelly, duly noticed the *custom*, which fixed one-half the produce as the limit of the rent. He qualified this by stating that the rates were not uniform, being regulated by local usages. The remark regarding a rate of "half the ain pahani" will be noticed further on.

Mr. Dunlop's Report of 1822.

We next come to Mr. Dunlop's Report No. 70, dated 31st December 1822. Part has already been noticed. Mr. Dunlop wrote:—"These points (the rates paid by the ryots) are also pretty well determined by prescription, but it unfortunately happens that most of the hereditary district officers, Deshmukhs and Deshpandays, are also khots, so that it is difficult to obtain information, but the practice of the former Government seems sufficient to authorise ours in establishing rules to restrain the exactions of the khots." These remarks are noteworthy as showing the great difficulties under which our Revenue Officers must have laboured. As to the "practice of the former Government," the point has already been noticed. The report proceeds: "Half produce seems to be the utmost limit of assessment from ardhelis to khots, and they frequently contract for more favourable terms when they are called khandkaris or maktekaris." The Collector urged the necessity of commencing a survey in his district.

The Government reply to this report is No. 435, dated 25th March 1823. The Governor in Council concurred with the Collector that "it is the interest both of the Government and the people to weaken the power of the khots, and that that object can only be accomplished by a survey such as you have proposed. The same opportunity (of the survey) would perhaps afford you the means of ascertaining beyond a doubt whether ardhelis have any right in which Government is entitled to protect them, and whether there is any point in assessment beyond which it might restrain the khot from proceeding towards those ryots." Reply of Government to the above.

Next comes Mr. Dunlop's voluminous Report No. 53, dated 15th August 1824. First he mentions a variety of old papers, a sight of which he had obtained with a view to ascertain the origin of the khots. "In one sanad by the Udul Shahee authorities persons are mentioned as khots, and in another part of the same paper the village is said to be granted in Izara, or farm, which would seem to make the terms synonymous." The Collector then mentions a paper in the possession of one of the claimants of the office of Deshpanday of Anjunwell, dated Sursan 997 (A.D. 1595) "which calls itself a kaulnama by the manager of Mustafabad (Dhabol), addressed to the Desais, Mukadams, and Khots of Inamb (?) Hamjabad, and which appears to be a series of decisions passed on complaints by these persons or by the inhabitants. The office is repeatedly styled '*Mirasi Khot*': several khotships which had been taken from the original proprietors are ordered to be restored. It appears also that the rights of khots had even then become a saleable property, for one case of a khotship sold and disputed by some person is confirmed. In one of the items of this paper an example however occurs of a khotship, which had been given to another in consideration of a higher paiskhush being restored to the original khot, only on his agreeing to pay the increased rate. In the same paper a sale of cocoanut trees by a Mahar, which had been objected to by the khot, is confirmed..... The last mentioned item, though indistinct, seems to afford a presumption that the khots even then claimed a sort of proprietary right in everything in the village, and objected to its being transferred or disposed of without their consent, as they do at present, but the confirmation of the sale by the manager of the district shows that the claim was disallowed, and many subsequent decisions by succeeding Governments show that the same claims continued to be persevered in, but were set aside when appeals were made to the Government, and from this claim it may be inferred that the general nature of their interference with the villages was much the same as at present." What was the nature of the interference at the present? Mr. Dunlop's Report of 1824. Extracts from old records.

Entries of cultivators' names.

Mr. Dunlop proceeds: "In the register of pahanis, or surveys, that have at different times been made of the districts under the collectorate, the fields belonging to kulargi or dharekari ryots are entered in their own names, whereas those belonging to the khots, and cultivated by ardhelis, are entered in the names of the khots. A cultivator's name being entered with his fields as shetkari was the record of his being a dharekari. This custom is perfectly regular in Salshi, Viziadrug, Ratnagiri, and Anjunwell. In the Suverndrug Taluka the cultivators' names are almost universally entered with their fields, though the villages are now in the hands of khots, which proves that they were all dharekaris at the time these registers were framed, and in fact they are acknowledged to have been so; but it appears that about 45 years ago some general understanding was brought about (in consequence of a dispute of the Deshpanday and Adhekaris) between the cultivators and the khots to pay $1\frac{1}{2}$ times, double, and even $2\frac{1}{2}$ times the quantity of grain, at which their fields were rated, on condition that the khots should take upon themselves to be responsible for all the demands of Government, but none of them pay a share of the produce, nor are they liable to be ousted from their fields, or to have their revenue raised on them by the khots, which forms a material difference in their favour over the khotki ryots." This is a most important extract. Captain Wingate did not quote it, but evidently referred to it in paragraph 24 of his report, when alluding to "former dharekaris who had parted with their rights under specified conditions to which the khot was bound to adhere, such as to pay $1\frac{1}{2}$, 2, or $2\frac{1}{2}$ times the Government assessment on their lands as rent to him." It is the key to a remark in Mr. Chaplin's report, which at first seems unintelligible, that is, "more than one-half the ain pahani is also a common rate, and in some cases even double the ain pahani is consented to as a hard bargain." Mr. Chaplin's informants were evidently referring to cases like those detailed by Mr. Dunlop. That officer, however, strongly disapproved of the arrangement thus made between the khot and these tenants. He considered it an encroachment on the part of the khots' (it seems that in consequence of the low price of grain at the time it was tolerably fair for the parties, but from the great increase in the money price of grains, and the general improvement of the district it had become highly advantageous to the khots, and the cultivators were most anxious to have it set aside), and called upon them to keep detailed accounts in order to secure the cultivators from unauthorized impositions. They refused. He therefore requested the sanction of Government either to the cultivators being allowed to withhold all payments beyond the regular revenue, or that a new survey be immediately commenced in the district. "The operation of the first proposition would be immediate in giving a great relief to the culti-

Case of the Suverndrug Dharekaris.

vators, but the second would be more regular and according to the established custom of the country, and could not be objected to by either party, but would be slower in its operation."

Reply of Government; as to the Khots.

The Government reply to this report was No. 33, 10th January 1825. First as to the relations between Government and the khots:—"Whatever may have been the origin of their title, they appear now to have acquired a right with which it would be neither just nor politic to interfere." Next as to the relations between the khots and the ryots—"The Governor in Council is of opinion that any improvements should be confined to ascertaining and securing the rights of the other classes without setting aside the claims of the khots, and even in this limited undertaking it is unnecessary to recur to rights that may have been enjoyed before the institution of the khots. It will be sufficient to discover what was the state of property during some good period of the Maratha Government..... Even that may be extremely difficult to discover, but if it can be ascertained beyond dispute that a certain portion of his gross produce was within that period the acknowledged rent due by a dharekari to his khot, it might be rendered obligatory on the khot to prove his title to any further payment, either as regular rent, or in the form of extra cesses, before he was allowed to levy it. On the other hand, if no general rate of the kind alluded to appears to have existed, all that can be done is to prevent any future demand on the dharekari exceeding his payments for the last years. If the dharekari demands any further advantage, the duty of bringing proof must rest with him. Even when a dharekari can prove that he was once entitled to more favourable terms than he now possesses, it will be necessary to listen to any attempt the khot may make to justify the alteration. In the case of the dharekaris of Suverndrug (mentioned by the Collector) there appears to have been a regular agreement between the dharekaris and the khots, which is stated to have been reasonable at first, although rendered unfavourable to the ryots by the alteration in the value of grain. This does not appear to be a case in which the Government is entitled to interfere, at least to the extent proposed by the Collector. There can be no doubt that the dharekaris were at liberty to have sold their watan outright, and thus to have reduced themselves entirely to the condition of uparis, and there is no reason why they should not in like manner have alienated a part of their rights, or why (if the bargain was not a fraudulent one) they should now expect to be allowed to recede from it. One privilege they appear to have retained, that of paying a certain proportion of their crop, which, however disadvantageous, is fixed, and cannot be increased at the pleasure of the khot.* In the enjoyment of this right it is the

And as to the ryots, Dharekaris.

* No; Mr. Dunlop said "none of them pay a share of the produce." The privilege was of paying a fixed calculation on the ain pahani, and as this was calculated in kind, the payment was in reality a proportion of the crop, but it was not always all in produce.

duty of the Government to protect them, and it is plainly entitled to establish any mode of registry, which is indispensably necessary to enable it to afford that protection. Your intention of appointing carkuns to examine the accounts is therefore perfectly just, provided they be furnished with such instructions as may prevent their interfering with the rights of the khots..... When the rate of payment is fixed, but disputes exist regarding the *amount*, it seems quite consistent with the pratice of the zillah for Government to order a survey, and fix the amount of assessment for a certain period. But it must be carefully observed that in every case in which the khots are called on to give up recent and unauthorized exactions, a corresponding reduction must be made of any additions which may within the same period have been made to the revenue payable by them to Government. The above observations relate entirely to the dharekaris. The uparis or ardhelis do not appear to possess even a usufructuary right to the soil which they cultivate, but to change from place to place as they are invited by favourable terms. With them it seems unnecessary to interfere by any rule on the part of Government. The competition among the khots themselves will always secure them the requisite remuneration for their labour, and if there appears to be a combination among the khots to deprive them, it can be counteracted by the grant of liberal terms on the part of Government in kulargi villages, which would soon draw off the ardhelis from the khots, or force them to grant reasonable terms. Perfect freedom of moving from place to place is necessary to the success of this plan, but it is supposed that the ardhelis are already in possession of that right. From the principles above explained it follows that the object of a survey, whenever it is undertaken, should not be to induce the khots to relinquish their farms, nor yet to make any addition to the payments of these farmers to the public, but solely to fix the dues of all parties with precision, and to induce the khots to accede to some arrangements, which are required to reconcile their interests with the welfare of the other classes. The establishment of kulkarnis, and the formation of a record of the rents payable by the dharekari, is the most important of these alterations.... The survey will no doubt detect concealed cultivation, and underassessed lands, and may be expected in other ways to lay the khots open to increased demands from Government. No advantage should be taken of these openings, for the khots must unavoidably be great losers by the proposed strict enforcement of the rights of the khots,* and must be ill-prepared to meet any new impost by the Government."

And Ardhelis.

The language of this resolution shows clearly what were the views of Government at that time regarding the khoti question.

* Government.

It may be noticed, however, that the Government decision regarding the Suverndrug dharekaris (who had parted with their rights to the khots) must have been reversed by the authorities at home. In paragraph 80 of his Revenue Report No. 54 of 1828 (which will be noticed shortly) Mr. Reid wrote:—" In the Suverndrug Taluka the condition of the old dharekaris was brought to the notice of Government by Mr. Dunlop. Although now reduced to the state of tenants under the khots, there is no doubt whatever of their having originally held their lands as independent proprietors, and as they are very desirous of recovering their ancient rights and are constantly petitioning on the subject, no opportunity should be overlooked of giving effect to the orders of the Court and re-instating them in those rights and privileges, of which by the preponderating influence of the khots under the late Government they have been deprived." And in the Government reply to this report (No. 1907 of 1828) paragraph 12, it is stated: " The Governor in Council is satisfied that you will overlook no opportunity of giving effect to the Honourable Court's orders for re-instating the old dharekaris of Suverndrug in their former rights and privileges, of which, by the preponderating influence of the khots under the late Government, they have been deprived, compensating the khots under the instructions issued to the Collector on the 9th December 1825 for every right they may for the general good be required to relinquish."

Decision regarding the Suverndrug Dharekaris

It is thus clear that compensation was to be given to the khots. And this accords with what the Directors wrote in their letter of 4th May 1825 (forwarded to the Collector with Government letter No. 2157, 7th December 1825): " We recommend it to you in a most particular manner not only to ascertain and protect the existing rights of the ryots, but to ameliorate their situation and relieve them from any claims which operate on them severely or oppressively. If any privileges of the khots are inconsistent with the required arrangements, it may be equitable to allow compensation for the loss of even a hurtful privilege, the right to which is well established, or of long standing, but in all cases it is necessary to put an end to the causes of abuse, and to power which can be exercised only to the disadvantage of the community. . . . Where rights are established in behalf of existing middlemen, of whatever denomination, and whether by the express act of the competent authority, or by long prescription, they ought to be respected; but when such rights cannot exist without oppression to others without materially obstructing the necessary operations of Government, it is desirable that a suitable compensation should be made for them, and that they should be abolished."

Compensation to be given to the Khots.

We now come to Mr. Reid's Revenue Report for 1827-28, No. 54, 26th August 1828.

Mr. Reid's Report of 1828.

The part important for this inquiry begins at paragraph 70 :—

"In the country situated to the southward of the Bankot river, comprising the talukas of Suverndrug, Anjunwell, Ratnagiri, Viziadrug, and Salshi, the khoti system is found complete. Most villages are purely khoti, that is, not possessing a single dharekari. The rest are mixed and kulargi. In the mixed villages from the custom of the khot or head of the village claiming the land, and being answerable for the revenue of ryots who have deserted, the khoti system is gradually extending itself. The introduction and extension of the dharekari tenure formed the subject of the 91st paragraph of the Honourable Court's letter of 23rd May 1827 (mentioned above), in which the revival of the right of individual proprietors, which may have been destroyed during the mal-administration of the late Peshwa, and the extension of such rights to temporary occupants are strongly recommended. The tenure under which khots hold such villages as are entirely khoti will prevent the introduction therein of anything similar to a miras system for the cultivators ; whatever opinion may be entertained as to the rights of the tenants under the khot, there can be no doubt of the inability of Government to create a miras tenure in the lands of a village of this description without his consent. The tenants under a khot are of two kinds. Under the one are comprised the tenants-at-will, who cultivate the lands from year to year or for settled periods, as may be mutually agreed on between them and the khot. The other consist of cultivators who have for a series of years tilled the same fields on payment to the khot of a fixed portion of the produce (generally one-half) the latter being-liable to Government for the land revenue. These latter there is every reason to believe to be the remains of old independent proprietors; many of them are patells and village officers, who appear to have been reduced to this tenure by the encroachments of the khoti system under the late Government. An evident distinction was made between them and the mere tenants-at-will. Their fields descended from father to son ; they were not liable to ejectment whenever the khot might consider it his interest to deliver the land occupied by them to other ryots, or to retain them under his immediate management, and their right to hereditary occupancy, under the condition of paying a fixed portion of the produce, was generally allowed. With regard to this class the right of the khot has perhaps been too far recognised since the introduction of our Government. The vagueness and uncertainty of their tenure, the difficulty of defining with precision what individuals should be comprised in this class, and the absence in the village records of survey, &c. of any mark by which they can be distinguished, have reduced them nearly to the conditions of tenants-at-will ; and I apprehend that the practice of our courts has much facilitated

Khoti tenants are tenants-at will, and permanent tenants.

this result by the recognition of the full proprietorship of the khot."

Mr. Reid then mentions the difficulty (felt also by Mr. Dunlop) of obtaining information on these points, as nearly all the hereditary district officers have an interest in khoti estates. He strongly recommends a new survey as an "opportunity of defining and securing the rights of those ryots who, though not dharekaris, are yet not mere tenants-at-will, and affording data for judging of the extent of the sacrifices which should be required from the khots in favour of the ryots, to entitle them to a deviation from the established rules and rates of assessment, the enforcement of which would render their property of no value."

Survey recommended.

He then notices the case of the dharekaris of Suverndrug (quoted above). Next, speaking of dharekaris in kicheri or mixed villages he says: "When a ryot holding under this tenure leaves his village, his land, if he have not otherwise disposed of it, reverts to the khot, who is answerable for the Government demands upon it, and therefore disposes of it at his pleasure. It becomes a part of his khoti property until the return of the dharekari within a certain period, and on certain conditions prescribed by the custom of the country, entitles him to the restoration of his land."

Right of khots to lapsed dharas.

Then follows a paragraph which deserves especial attention. "Many villages in the northern talukas, which were under the Peshwa's Government farmed annually or for a term of years to khots, (for both hereditary proprietors and temporary farmers of the villages bear this denomination), have been resumed, and are now managed directly by Government through the agency of tallatis. In these villages the introduction of a miras tenure among the cultivators in supersession of the modes of ardhel, makta, hundwa, &c. has been attempted, but the ryots have generally declined to accept of it, and prefer living under a capitalist, who can advance them the petty sums they may require for present expenditure, and assist them in their cultivation."

Benefits to ryots from the khoti system.

This is an important extract, because it illustrates a point which must strike any one enquiring into the origin of khoti tenure, and that is the fact that the ryots *preferred* having a khot between them and the 'Sirkar.' In some sanads conferring a village as a khoti watan it is actually stated that the cultivators had petitioned for a khot. He acted as a *buffer* between them, and the extortionate demands of the Revenue Officers under the Native Government. And this is easily comprehended when it is remembered that formerly districts used to be farmed to the native officials, whose sole object was to squeeze as much revenue as possible out of each village. The khot bore the brunt of this struggle. In many cases he prevented a new survey of his

village by consenting to the imposition of some new "patti." This no doubt he recovered from the ryots, but he gave them their own time to pay, advanced them money for their cultivation, and was a milder master than a rapacious Revenue Officer would have been.

Captain Wingate wrote in 1851—"In the disturbed and distracted state of the country the ryots were probably glad to have the khots to stand between them and the Revenue Officers, and for this protection to put up with a good deal of oppression and injustice at their hands."

PART III. 1828—1848.

Lieut. Dowell's survey;

The third division of the subject commences with Lieutenant Dowell's survey, which was sanctioned in 1826, and finished in 1829. Only one taluka (Ratnagiri) was accomplished, a full account of which is given in Lieutenant Dowell's report dated 1st November 1829. From 1829 to 1833 he was employed in the collection and preparation of data, on which an adjustment of the assessment might be effected. But a great obstacle was found in the fact that the chieftain of Vishalgarh held divided rights in the taluka. Great delay took place in the negotiations with the chieftain, so in 1833 Government reduced the establishment.

His report of 1829:

Lieutenant Dowell's views are set forth in his report dated 1st November 1829, which was largely quoted from by Captain Wingate. Before noticing this report in detail it is necessary to call attention to the following point. The data collected by Lieutenant Dowell refer only to the Ratnagiri Taluka. Captain Wingate, in mentioning this, says, "but I was given to understand that the rights of the khots were much the same in all parts of the collectorate." This is true: whatever difference there may have been originally in the rights of different khots, they had for some years been treated quite the same all through the district. But this is as regards the relations between the khot and Government. As regards the relations between the khot and his ryots it was very different. In this case local usages played a most important part, and no one more admitted this than Lieutenant Dowell himself. After giving a description of the khoti system, he says:—"These are a few of the customs concerning the land, and there are others which vary in different villages; each village has, indeed, peculiar customs on many points, which descend into trifling matters, and are observed by the villagers, who are unwilling to depart from the custom of their villages."*

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* The general "revenue system" varied in a small measure only, as stated by Mr. Coles in his letter to the Revenue Commissioner, No. 678 of 1849.

Ratnagiri Taluka, with which alone Lieutenant Dowell was acquainted, is but a small portion of the whole district, though it should be noted that in 1829 the taluka comprised in addition to its present extent, the Sangameshwar and Lanjé Mahals. For the purposes of this enquiry it is not necessary to give at length the extracts from Lieutenant Dowell's report which Captain Wingate quoted. It will suffice to point out the leading features. Summary thereof.

Lieutenant Dowell divided the land in a khoti village into two parts:—

(1.) That which is permanently divided among the inhabitants, and usually consist of about three-fourths of the village.

(2.) The remaining one-fourth which is not permanently di vided.

Division (1) be sub-divided into—(*a*) land divided among the khot's family; this was usually the rice land, each member of the family also holding a piece of warkas land like the other cultivators; (*b*) lands held by the kardes (watandars). They are supposed to be the families of former dharekaris, and of older standing in the villages than the khots. They are generally of the Kunbi caste; each family cultivates its portion of the warkas land within fixed boundaries, paying rent to the khot. Their rights are regulated by custom,* and are not the same in all villages. Generally speaking, they cannot be ejected by the khot, except if he rackrents them. They may temporarily leave their lands and return to them: if they never return the land becomes "gayalli," and belongs to the khot.

Division (2) is called *Gawik;* its annual cultivation is managed by the khot; it is generally the worst part of the warkas land: a part of it is cultivated by as many of the villagers as are able, for which they ask the khot's leave, but he depends chiefly on strangers who come annually to rent pieces of gawik waste, and who are called badhekaris and dulandis; some of these are watandar kardes of neighbouring villages, and some possess no land elsewhere. They resemble the uparis in the Deccan. Both kardes and badhekaris are called ardhelis and tirdhelis.

The above is a summary of Lieutenant Dowell's opinion on the relation between the khots and their ryots, as given in his revenue report on the Ratnagiri Taluka, dated 1st November 1829. From November 1829 to May 1830 he seems to have gone from village to village collecting all the information he could possibly obtain from *all* kinds of people—Khots, Kunbis, Mahars, &c. This information relates to tenures, customs, modes of cultivation, and Lieut. Dowell's *Notes.*

* Lieutenant Dowell says "they are merely customers."

such like matters, and is embodied in three volumes of manuscript notes, containing 654 pages of close writing. These notes were written *after* he had expressed his opinions in his report of November 1829 (not before, as Captain Wingate seems to have thought, paragraph 29 of his printed report), and it will be instructive to compare some of these notes with the opinions above summarised. It will be necessary first to explain some of the terms which he used.

Terms used by him.

Karda—given in Molesworth.—"One who cultivates a farm, the *actual* cultivator, whether tenant or proprietor, often written plurally, as करदे पाटील."

Gayalli—this is given in Molesworth.—"गयाळ, deserted, abandoned, quitted—a tenement; 2nd, emigrated—a family or person; 3rd, also गयाळी, stupid of persons, bad of things."

Gawik.—This means 'belonging or common to the whole village.' Lieutenant Dowell applies it both to the land used as grazing land, common to the whole village, and to the land common to the whole body of khots in a village, the profits of which they obtained by letting portions to tenants-at-will.

Badhekari—बाधेकरी—given in Molesworth.—"A person residing in a village in which he has not, and his fathers had not, any watan or landed property; 2nd, a person residing in one village, and cultivating land belonging to another." It means of course 'one who makes the cultivation of a bádhen, बाधें.' Now bádhen is 'lands without an adhekari or proprietor, lying waste, and added eventually to the village to which they are adjacent.' The derivation of bádhen may be that it is a prakrit form of 'báden,' which is derived from bád—बाद, *deducted*—and means lands deducted, not included in the jamabandy of a village, but belonging to a separate proprietor, then such lands of which the proprietor has disappeared, and which were eventually added to the village.

It is thus clear that there may be two kinds of badhekaris in a village. A man who resides in village A, and cultivates lands in village A, but is not a watandar of that village, having come there from some other village, where he is a watandar.* Or a man who is a watandar of, and resides in, village A, but also cultivates some land in the neighbouring village B.

Dulandi—दूलंडी.—"A cultivator or revenue payer of one village, whilst he lives in another."

* Lieutenant Dowell says at page 33 of his notes: "Every Kunbi is a watandar somewhere, and indeed all castes are watandars somewhere, except Dhangars, a few Gowlis, Goswamis, and Sindhas."

Proportion of land held by khots to that held by tenants.

The first point to notice is that it is impossible to draw any line, and say that three-fourths of a village are usually held by the khot's family and watandar ryots, and the rest by badhekaris, and that all the rice land is generally in the hands of the khoti family.

Thus, page 131 of Lieutenant Dowell's notes :—

> "Some of the best land in these villages is not under the khot, but the property of kardes, which shows that the khots have no real power of directing the kardes in what part of the village to cultivate, since the khot would of course get the rice land for himself if he could."

Page 164 :—

> "*Lanje Mahal.*—Nearly the whole of the rice land in every village in this Mahal is cultivated by the Kunbis, and is their watan land; scarcely any is the khot's land, though no doubt the khots would get it if they could. The only way the khot can get it is if the Kunbis become poor, and do not cultivate it, and even then his bhavband will do, or the Kunbi will take a sobti (partner) to assist him, so that it does not in a length of time fall into the khot's hands. This must keep the Kunbis in their own villages since their watan is of value (*i. e.*, they do not go as badhekaris to other villages). In Kele Mahal the rice land is all in the khot's hands. The khots of this Mahal (*i. e.*, Lanje) are probably all new within these 80 years, and the real khots paraganda and gayalli" (*i. e.*, have deserted their villages).

Page 173, speaking of Kondye in the Lanje Mahal :—

> "The rice land is nearly all in the hands of the Kunbis; they say they could not sell or pawn it, but still they never allow it to fall into the hands of the khot or any other person. If a Kunbi's bullock die, or he grows poor, he either gives his rice field to his relations, or if he has none, he gets another Kunbi to come and live near the same fields and cultivate half, but the Kunbi derives no benefit more than the keeping on of his watan: the assisting Kunbi never obtains watan that way, because the watandar, within four or five years, either gets rich again or some relation grows up and takes it."

Page 264, speaking of Devlé :—

> "The rice land is one-fourth of it khotki, of which he only cultivates five acres, and gives the rest to badhekaris. Three-quarters of the rice land is watandar Kunbis' rakmi* land. About one-fourth of the warkas is khotki also, and three-fourths watandari. The khotki warkas was, one hundred

* Bearing fixed assessment.

years ago, a Musalman's and a Salvi's, and as they are dead, or gayalli, it has become khotki."

And of the village of Moradpur, page 267 :—

"The rice land is about equally divided between the watandar ryots, the Brahman khots, the Gowli khot, and the badhekaris, and one-half the warkas is cultivated by badhekaris and half by watandars."

The village of Pur, page 289 :—

"The khots have divided the rice land sixty years ago, and they have about two acres each, but they left twenty acres in common, and take thal in it. The khots do not cultivate any warkas, nor do they meddle with the cultivation, but all the land is apportioned between the watandars and the badhekaris; both those in the village and those from other villages ask the watandar Kunbis for land every year."

Shenavré, page 418 :—

"The watandars cultivate one-fourth of the rice, and one-eighth of the warkas; the rest is khotki by badhekaris; the khot tills none."

It is evident from the above that the badhekaris did not only cultivate what Lieutenant Dowell called the gawik land, but also the watandars' lands.

Proportion of watandars and badhekaris.

It is impossible to say what was the average proportion of watandars to badhekaris residing in a village. In describing each village, Lieutenant Dowell has noted the different houses therein, particularising whether inhabited by watandars or badhekaris, but the proportions vary greatly. In some villages there appear to have been no watandars at all. Thus: Dhondré, page 178 :—"The whole is cultivated by badhekaris from Lanje, &c." Bondye, page 217 :—"The Kunbis have been here but three or four years; they came here because they have to pay but tirdhel; the khot did not send for them, but as they have no joths,* and as the jungle has become thin in the plains of their own villages, they went about enquiring where they could settle advantageously. The khot says the Ghera (that is, villages in the environs of the Fort of Mymatgarh) is chiefly inhabited by badhekaris."

Village of Funsht, page 308 :—"The watandar Kunbis were induced to come within these four or five years by the khots promising to take no vets." Then, of course, they were not *watandars*, and Lieutenant Dowell has entered the Kunbis' houses as those of badhekaris.

Karbhatle, page 388 :—"All the people are badhekaris."

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* Ploughs with bullocks.

Burjkhol, page 609:—"There are no houses in the village. . . . . The consequence of there being no watandars (in this and other villages) is that they (the badhekaris) come twice as many one year as another, as it depends upon their own convenience, their own land being first attended to, and the cultivation accordingly is one year two kandis thal, and another year four kandis."

There are some instances where nearly all the ryots are badhekaris. Thus, Tulsanni, page 271:—"The ryots are chiefly badhekaris; the watandars all quitted at the great famine twenty or thirty years ago." Some of them must have returned and claimed their watan.

On the other hand, there are instances where there are no badhekaris. Thus, Unduri, page 408:—"There is no gawik khotki land, all being watani of the Kunbis (*i.e.*, be come so as the khot lives elsewhere, and no Mahar is there). No badhekaris come here to cultivate, nor do the ryots go elsewhere." The number of houses in the village is given as "31 Kunbis', watandars' 16, badhekaris' 15." So the meaning of the above must be that all the ryots, whether watandars or not, have come to have rights of permanent occupancy; there is no khot living in the village to arrange the annual cultivation, and no Mahar to demand fees, &c.

Newli, page 438:—"The land is all watandari, and no gawik. If a kul dies his relations get his land; the badhekaris have no shima land (*i.e.*, within fixed boundaries) of their own, but ask each watandar annually for land. The garkaris* keep the land they formerly cultivated, and have thus become watandars."

Origin of badhekaris.

At page 68 of his notes Lieutenant Dowell wrote—"It is not easy to know why the badhekari system proceeds at all since the villages appear merely to make an exchange of Kunbis for a year." But further on he noted the reasons for the custom. Thus, page 304:—"The badhekaris that come are from Dhamapur, &c. The Kunbis go as badhekaris to the same villages. This happens on the boundaries of the two villages, because a Kunbi likes to have all his cultivation in one place for the sake of watching, &c., instead of in two or three places a mile apart, which he can usually manage by cultivating the land adjacent to his own on the boundary of the next village."

Again at page 451:—"The ryots go out to Pachamba, &c.; those who have no joths go for hill land; those who have joths come for rice and bhatlé lands, which is the commonest reason of badhekaris here."

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* That is, peons belonging to the Forts.

Origin of watandars.

As to the watandar* ryots, it will be useful to quote some of Lieutenant Dowell's notes, page 47 :—"The watandar kardes have all their land within more distinct boundaries in Fansol than in most villages, because it has been kulargi later than others, that is, within eighty years, and the present kardes were these dharekaris."

Punas, page 85 :—"As the village has been not long ago kularag, the Kunbis' watandari lands are distinct, but one-fifth of the village still is gayalli land, and this is usually cultivated by the other Kunbis of the village, and is permanently partitioned among them, so that they hold it in the same way as they do their own watani land, but they consider themselves as the khot's permanent kardes in the gayalli land, and liable to be ejected,† though it has never been done, while from (? in) their own watani land they have a right to remain while they pay the khot's dast. ..... Every inampatr in a khoti village contains names of Kunbis on the boundaries now no longer known in the village, and yet the present occupiers of that boundary land are considered watandars, so that some of the Kunbis have gradually become watandars by their origin being lost in time, while others are probably before the khots, and were former dharekaris. The Kunbis, however, in the present kulargi villages are most of them not watandars, but the ardhelis of large dharekaris (whom they call their khot), so that it is possible the Kunbi race were never dharekaris, but that the dharekaris of the khotki villages, whose names are found in the boundary fields of inampatrs, have gradually become gayalli of their own accord, after losing part of their rights by the institution of khots."

Right of watandars to transfer their lands.

The watandars seem in many cases to have mortgaged and sold their lands, and in some cases without the consent of the khot. Thus in Dhamapur, page 509:—"In this village the watandar kardes have the right of mortgaging, and in effect of selling their lands without reference to the khot."

At page 131 of his notes Lieutenant Dowell gives an instance of a watandar Brahman karde selling his land before going to Benares, and the vendee paying thal to the khot.

At page 161 a curious case is given :—

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* At page 67 Lieutenant Dowell notes "the castes who are not usually watandars of lands :—

Dangars (entirely).
Chakar Sindhe.
Dharwar.
Kumbhars (usually).
Daldis (usually)."

† Then they are not permanent.

"The khot of Kamte has in mortgage a field of a karde in Nimbochewara. He paid the karde of the field three hundred rupees. The karde then went to Benares, where he has been eight years. They agreed that if the karde did not return in ten years, the Nimbowara khot should repay Kamtekar Rs. 300, and take the land as gayalli khotki, to which the khot agreed."

As to mortgaging the following cases may be taken :—

Page 500.—"All the karde ryots, both in Dhamapur and Maolunge, mortgage their lands to any one, so they have part of their kulargi rights remaining." In Birkonde this right seems to have existed, even though it had not been a kulargi village. Thus page 503 :—"The village, they say, was never kularag, and has no kulkarni, but the ardhelis have a right to mortgage their land. The khot says they have a right to sell also, but no one will buy, as the thal is at the khot's mercy." The meaning of this is that the khot is so powerful that he can compel the ryot to accept his estimate of the crops, however exorbitant.

Instance of alteration of a watan.

As an instance of a watan being altered by absence from the village, Lieutenant Dowell notes of Mamle Prabhavli, page 180 : —"The Marathas called Biradrao (4 houses) were chowthelis till thirty years ago, when they become tirdhelis on account of being absent four or five years, and not receiving their watan as they left it." The khot seems to have been so powerful as to impose a condition on their taking back their watani land.

Instance of a dispute between a khot and his tenant.

As an instance of a "dispute between an ardheli and a khot," Lieutenant Dowell wrote at page 414 :—"The sonar claims some land as khotki watandari karde land, but after a long set of statements taken in Bajirao's time, about whose land it was, it was attached for five years, and when liberated was given to the khot, who has held it ever since, and the dispute shows that a ryot could complain against a khot by right as well as custom about his karde watandari land. These papers, which are complete, in the possession of the sonar, show the right of karde land. The sonar had left his village and returned to claim his land. The land is khotki." The sonar does not seem to have gained much by his dispute.

Acquisition of a watan by prescription.

The extracts from pages 85, 408, 438 show how some cultivators seemed to acquire a watan by length of time. Here is another instance, page 89 :—"Some badhekaris build in the village and *gradually acquire* the watan by time in gayalli Kunbis' fields. Some gayalli fields are never permanently tilled by the khot's new kardes, or by dividing the land among other kardes, but perpetually remain khoti gayalli, and are tilled either by other village badhe-

karis, or by any karde in the village *as a badhekari*, that is, not retaining it permanently."

Difference in the houses of watandars and badhekaris.

With regard to badhekaris building in the village, Lieutenant Dowell noted (page 53) that a "stone chouthra (raised terrace on which to build a house) is a common right of a watandar." And page 112:—"The khot complains that Kamat has made a house chirebandi (of stone work), which was formerly the sign of a malik (proprietor)." It is thus clear that the khots in many cases objected to badhekaris acquiring watan in their villages, and Mr. Reid, in paragraph 32 of his Report No. 86 of 1829 (quoted above), wrote of "the objection which the khots of villages entertain to permitting houses of a superior structure to be built within their boundaries, under the impression that the erection of a house on a stone foundation and with a tiled roof gives the builder a claim to become a watandar of the village, and to interfere with the rights and privileges of the khot."

Instances of Khots granting inams and watans.

At paragraph 31 of Captain Wingate's report there is an instance of khots bestowing some land in inam and miras. This of course they could not do with watandari land. Here is an instance of a khot granting a watan to a badhekari, page 49:—"There is a field mortgaged to Salé, who was originally a badhekari karde. The khot says that in a year of famine he told Salé he must either quit the village or pay him a large sum towards his loss in the village. So Salé paid him the Rs. 500, and got the land in mortgage, with agreement that it should be watan if not returned in 25 years, so it will become watan." At paragraph 32 of Captain Wingate's report there is an instance of what that officer calls a khot assigning away his gawik land to tenants in watan. It appears that Kolwan, which was a hamlet of Pathrat, had no houses; so the watandar Kunbis of Pathrat came and cultivated the lands of Kolwan, and thus became watandars there also. Like the villagers in Punas, page 85 (quoted above), they held these lands in the same way as their own watani lands. There was one khot for the village and the hamlet. This did not always take place. Thus, page 53:—"Khanu—The gawik land is about 100 acres in which no present Kunbi has a watan to remain."

Parallel case to that of the Suverndrug dharekaris.

Here is an extract which may be compared with the case of the Suverndrug dharekaris, who had become daspatkaris, &c., (mentioned above). It occurs in the account of the kulargi village of Hurche, page 144:—"One of the Kunbis who was a dharekari of Rs. 15 gave up his kunbawa (estate) gratuitously to the khot at Parashram's* survey, because he thought he might be unable to pay a regular sum, having no bullocks, &c.; he received no

* In 1810-11.

money, and he now pays the khot thal for his land, but he says if he should be able to get money to cultivate, he should expect the khot would let him have it again, but that will never happen." (This must mean that the ryot hopes that the khot will let him hold the land as a dharekari again.)

Value of Lieut. Dowell's notes.

Many instances could be quoted like the example given by Captain Wingate in paragraph 33 of his report to show how difficult it was to obtain correct information as to the various tenures. There can be no doubt, however, but that Lieutenant Dowell's notes are of great value as cumulative evidence. They are not the result of information asked for here and there, but the outcome of patient research, and though in some cases he may have been deceived by the khots and the ryots, yet his opinion as to general customs and tenures is entitled to great weight.

Summary of Lieut. Dowell's views.

Captain Wingate sums up Lieutenant Dowell's opinion thus (paragraph 34): "Numerous similar examples might be cited from Lieutenant Dowell's notes, and all tending to prove the correctness of the opinion held by that officer that, with the exception of the gawik or gayalli land, which bears a small proportion to the whole, the land in khoti villages is divided among, and held in perpetuity by, the kardes, or permanent tenants, whom the khot has no right to dispossess; and from whom he can exact no more than the recognised share of the produce, and some additional cesses according to the usage of the village." The extracts given above show that this is not quite a correct account of Lieutenant Dowell's opinion. Comparing his report of 1st November 1829 with the manuscript notes the following seems a fair summary:—

A.—Lands held by the khot's family.

B.—Lands held by the khot's tenants.

(*a.*) Held by watandar kardes, who are probably the families of former dharekaris. They have permanent rights of occupancy, which are generally respected by the khot, and in most cases have the power to mortgage and sell their fields.

(*b.*) 'Gawik,' *i.e.*, land belonging to the khot, comprising land not yet brought under cultivation, and *gayalli* lands, *i.e.*, fields, the watandar owners of which have left the village.

This class of land is cultivated either by the watandars or by badhekaris (who live in the village or come from neighbouring villages). In either case the tenant is a tenant-at-will.

Badhekaris also sometimes cultivated the khot's own lands and the watandar's fields under agreement with the khot or watandar.

It is impossible to fix any proportion as to how much land in a village was held by permanent tenants. By the force of custom some badhekaris seem to have attained the position of watandars.

All cultivators under the khot were called ardhelis or tirdhelis.

After Lieutenant Dowell's survey establisment was reduced in 1833, the correspondence regarding khoti tenure seems to have ceased for some years. In 1836 the ryots of the Weshvi Mahal petitioned Government against the levy of certain taxes, and even-

Mr. Glass' Report of 1837. Relations between the khots and their tenants.

tually the Collector, Mr. Glass, wrote a Report, No. 29, 5th May 1837, furnishing "full information of the precise nature of the rights and privileges claimed by the khots, and how far they have encroached upon them." Mr. Glass does not seem to have agreed with Lieutenant Dowell. He wrote:—"In villages purely khoti the proprietary right to the land centres in the khot. . . . . The direct tendency of the khoti system is to keep the ryots termed 'ardhelis' in the lowest stage of poverty, as it is their interest to make the best bargain they can for themselves; they are, however, in general kind and conciliating to them, as the ryot being a tenant-at-will can quit the village whenever he finds himself oppressed or over-assessed, and as his doing so throws a certain quantity of land on the hands of the khot, who is obliged to make good the full amount of the revenue of the village, self-interest induces him to act with a certain degree of liberality towards his tenant, who, though he never can be in a flourishing condition, yet seldom suffers from absolute want."

The rest of the report may be thus summarised: the origin of the tenure admits of dispute, and some of the privileges cannot be traced, yet the khots have had possession of their tenure for 150 years, and in some cases there is documentary evidence nearly 200 years old; their proprietary rights were recognised under the Peshwa's administration; it would not be politic or just to disturb the system, and it is doubtful whether the ryots would consider independence to be a benefit. If changes are made the consent of the khot is necessary, and if athveth and such exactions are abolished, a corresponding abatement must be made in the revenue taken from the khot.

Mr. Ellis' Report of 1845.

In 1843 and 1844 some ryots of Seergaum (Anjunwell Taluka) petitioned Government, complaining of oppression on the part of their khot. This produced a long report (No. 5) by the 3rd Assistant Collector, Mr. B. H. Ellis, dated 20th February 1845. The matters complained of were numerous, such as the levy of veth, house-tax, karsai, &c. The following extracts from the report are instructive:—

Demands of the khot on his tenants.

Paragraph 4.—"Complaints are made of his (the khot) taxing jack-trees and straw, but I believe that the khot, though unable to raise the grain rental, is at perfect liberty to levy such taxes on the miscellaneous produce of the land as he may please, provided that he gives due notice, and makes due agreement with the ryots from whom it is to be levied." Paragraph 16, *et. seq.*—"It is undoubtedly the case that the custom of the country authorises the levy in khoti villages of karsai and other cesses over and above the ordinary assessment on the land. . . . . The question as to the power of taxation possessed by the khot over the ryots of his village is somewhat difficult. . . . Theoretically, the khot cannot exact more from the cultivator than the proportion of the produce authorised by ancient custom, but practically by the imposition of extra cesses this is frequently disregarded, the only limit to the khot's exactions being the power of the ryot to pay. . . . It appears to be a matter how far interference would be justifiable in the relations between the khot and the ryot under his control. It is questionable whether it would be strictly just to deprive khots (under Act XX. of 1839) of this source of revenue, whilst the quota payable by them to Government remains unaltered, and a loss would be entailed upon them, causing perhaps in some extreme instances a difficulty in meeting the fixed revenue demands, and in all cases curtailing rights, which they regard as their undoubted privileges. . . . . It must be considered how far the ryot would really benefit by any interference on his behalf. Of the evil tendency of the present system there can be no doubt. . . . . But then, if the khot were forced to abandon these levies, might he not exact their value from the ryot in some other shape? Upon this point I have not been satisfied, for though custom has fixed a certain rate of assessment (half the produce), beyond which the landlord has no right to make a demand, I am not aware in what way Government could interfere, if he chose to demand even two-thirds of the grain produced. There would, of course, be one check upon an exaction greater than the ryot could bear. The latter would leave the soil to seek livelihood elsewhere, but this privilege is little better than a mockery in a zilla where land is so scarce as to render any state short of absolute starvation preferable for the ryot to an abandonment of his native village. They therefore remain in spite of all oppression, while, on the other hand, the khot is careful not to drive matters so far as to lose the services of all the cultivators in his lands." Mr. Ellis therefore recommended that so much of these levies as might be deemed merely nominal or honorary should be retained, so as to mark the maintenance of the khot's privileges. Mr. Collector Liddell, in forwarding this report, concurred severally with the opinions expressed by his Assistant.

Reply of Government to the above. Power of Government to interfere.

This report was eventually answered by Government letter to the Revenue Commissioner, No. 2641, 10th May 1848. His Lordship in Council considered it "a monstrous doctrine used by Mr. Ellis that though the custom of the country may limit the khot's demand to a certain portion of the produce as rent, there is no limit to any other demand he may make on his ryots." The letter proceeded—"Notwithstanding that the Law does give Government the power of prohibiting the levy of these items, such power must be exercised with care, lest Government, in its desire to relieve the ryots from oppressive or vexatious taxation, deal unfairly with the khots." Government therefore asked for some further information on certain points. The Revenue Commissioner had recommended that "the Collector be directed to make a full and searching enquiry into the khoti system, and that he endeavour to show how much of this system is ancient and legitimate, and how much is modern usurpation, every procurable evidence, whether documentary or oral, should be taken, and a full report of the result made to Government." But His Lordship in Council doubted "whether, at this distant period, the Revenue Officers in the Southern Konkan will be able to elicit more trustworthy and useful information on the above points than was collected and recorded by their able predecessors during the first years of the Honourable Company's rule. Government has on record sufficient facts and opinions respecting the relative rights of khots and khoti ryots, and a further elaborate investigation would merely tend to give perhaps an undue weight to the opinions of those officers, who may be commissioned to carry it on. Moreover, such enquiries, however well conducted, would not of themselves be sufficient to enable Government to determine how it can protect its subjects from extortion, and free them from servitude of a description the most annoying and vexatious, without risking the loss by many of the khots of the means of meeting the revenue demands. In the opinion of the Right Honourable the Governor in Council nought save a correct field survey and classification can afford us the data on which to proceed, so as to do justice to all parties, and His Lordship in Council has therefore determined on transferring Mr. Coles to the Ratnagiri Collectorate, in order that he may pave the way and assist in the introduction of a revenue survey." This fitly ends the third division of the subject.

Survey needed.

PART IV. 1848—1858.

The fourth division of the subject is most important, the chief feature being of course Captain Wingate's elaborate report, and the survey operations which followed thereon.

Before entering on that report in detail it will be well to notice the general opinions of Mr. Coles and his Assistants. Mr. Coles, in a memorandum which he left on the records on his leaving the collectorate, wrote:—"The plaguy question of the collectorate has been to define the term khot. I consider him a farmer who has usurped great privileges, when no check was at hand; the British Government succeeded a bad rule, and were anxious not to disturb existing customs; some investigations took place, but it was not found necessary to promulgate any definite order; it was hoped that things would find their own level, or that Government would be in a position to survey the country, and revise and determine the assessment." In his report No. 1530 of 1848, 9th November, on another petition of the Seergaum ryots, Mr. Coles stated that he certainly agreed with his predecessor, Mr. Liddell, "that Chapter VI. of Regulation XVII. of 1827 is inapplicable to them, that is, to watandar khots." Mr. Coles' opinions.

In 1850 Mr. Coles wrote a long report, No. 1490, 13th September, on a question which had been submitted to him by Government, that is, the right of the khot of the village of Tullegaum, (in the Tanna Collectorate) which had been attached by Government for some years, to resume the management of his village. Mr. J. S. Law, the Collector of Tanna, had stated: "According to the custom of the district, a watani khot is always entitled to have his village restored to him in perpetuity, on his making good any deficiencies of revenue which may have accrued whilst under attachment, unless he should have formally resigned his claim in writing." Mr. Coles, after an elaborate report, came to the same conclusion. He first quoted various authorities, *i.e.*, Messrs. Pelly, Chaplin, Dunlop, Reid, Government Resolutions, and letters from the Court of Directors, showing that whatever was the origin of the khots, they had always exercised certain rights and privileges with which it would be neither just nor politic to interfere. He then noticed that when khots had surrendered their villages on account of loss, Government had often leased them to other individuals, but never permanently; and he added:—"There is no instance clearly shown of the Peshwa's Government having transferred a watani khoti village permanently to another party." He then noticed the practice of requiring the khot to pay up the loss, if any has occurred to Government, and numerous instances in the Peshwa's accounts of villages being attached owing to disputes between the khots, and restoration thereof on payment of the loss, and often of a nazarana. A case is then noticed of a Mamledar in the Peshwa's time having levied a "charh," or increased revenue, from some khots in the Anjunwell District. Mr. Coles also referred to the practice of our courts as recognising the custom of khots resuming the management of their villages. The right of khots to resume the management of their villages.

On 10th October 1848 Mr. Coles submitted to Government his own report (No. 1362) and that of his First Assistant, Mr. Loughman, on a petition of a ryot of Hasal, Taluka Rajapur, with regard to certain impositions of which he complained; and, again, on 10th February 1851, the Collector submitted his report (No. 204) and that of his First Assistant, Mr. Loughman, No. 90, and that of his Second Assistant, Mr. J. W. Robertson, No. 87, on the same petition. These reports contain a mass of information with regard to "Karsai" and "Veth," and there are one or two extracts which may profitably be made. Mr. Coles confines himself chiefly to a consideration of the taxes in question. At the end of his 2nd report he writes:—"It should be determined whether they (the khots) are to be dealt with in the light of patells, with whom Government settles for the revenue periodically, or, as Mr. Robertson would have them considered, the owners of the soil, and the lands of the villages their estates, or merely treated as farmers amenable to the regulations under Chapter VI. of Regulation XVII. of 1827." Mr. Coles also adds an extract from a letter from Mr. Chaplin, the Commissioner in the Deccan, of the 18th November 1820, and says: "The information contained in it is borne out by the Zhartis of the Peshwa's time, which clearly show that the farms of villages were from time to time renewed in the different Mahals of this collectorate." The letter in question ran:—"The khot of the Southern Konkan is an hereditary village officer, a watandar as much as a patell or kulkarni. He is a sort of contractor for the whole village, being answerable to Government for the amount of the jamabandy, which was used to be fixed once in perhaps six or eight years. For that period therefore the khot is in fact the farmer of the village. . . . . The situation is similar to that of the patell in those parts of the country, where that officer used to be answerable to Government for the whole revenues of the village, settling as he could or pleased with the ryots, with this difference that in the Deccan the jamabandy used to be made anew every year, so that the patell was only the farmer from year to year, whereas in the Konkan the jamabandy was not renewed perhaps once in ten years, during which time the khot held the farm of the village." It is possible that Mr. Coles took this language to mean that when a new jamabandy took place, the old khot was turned out, and a new one put in, or that "the farm was renewed."

Renewal of khoti farms. Mr. Chaplin's account.

Mr. Loughman with his report forwarded statements of the khots and the ryots on various points. "From these," he wrote to the Collector, "you will perceive that in almost every instance the khots assert their tenants to be simply tenants-at-will, whom they may turn out when and as they like. This opinion is, however, disputed as invariably by the tenants, who assert that as long

Mr. Loughman's Report on the relations between the khots and their tenants:

as they can cultivate the ground they occupy, comply with the just and customary revenue demands of the khot, they have a title to the continued occupancy of the soil. The khots fail to produce instances of ejectment against the consent of the tenant, or when the latter has not failed in the proper cultivation of land, or in the payment of his dues. It appears to me there is a tacit understanding among all that, as long as the tenant is industrious and does his best, he should not be removed, and that this is the ancient custom, which has not been much modified . . . . . What are the respective rights of khot and tenant ought without further loss of time to be determined." Mr. Loughman was "not disposed from his late investigations to think that there is any oppression worthy of notice *generally* practised by the khots in their villages."

Mr. Robertson's on the same, and on the power of Government interfere.

Mr. Robertson all through his report treats the khot's tenants as "tenants-at-will," and the khot as being "owner of the soil," but this ownership he considered was "not an absolute one," because Government at the time of the re-assessment of the lands of a taluka had the power of making a fresh settlement of the revenue payable by the khot, and this power Mr. Robertson considered to be the same as that "of interfering with the khot in the right that he enjoys over his tenants-at-will. Until, therefore, a survey takes place throughout the zilla, it would be inexpedient at present to interfere in the matter beyond limiting the khot's exactions to what is only acknowledged to be his just demands."

Commencement of the survey. Captain Wingate's Report; his sources of information.

In 1848 Mr. Coles came to Ratnagiri to pave the way for the operations of the revenue survey. In 1849 he put himself in communication with Captain Wingate, who was 'Superintendent Revenue Survey and Assessment Southern Mahratta Country,' and forwarded to that officer a collection of papers relating to land-tenures and revenue management of the collectorate. Nearly all these papers have been referred to in the preceding pages. It must be remembered that the sole basis of Captain Wingate's Report No. 44, 30th January 1851, was this compilation of records, together with some additional information gathered during a *fortnight's* tour in the Ratnagiri District, and some conversations with Mr. Coles; and he wrote to Government in 1853 (No. 661, 19th September): "My particular acquaintance with the details of revenue administration in Ratnagiri is not such as to entitle my opinion to much weight." It is not necessary to refer to the preliminary paragraphs of the report, which touch on the kulargi tenure and such like subjects, nor to quote over again the extracts from the records to which Captain Wingate called attention. It has been shown above that Captain Wingate's statement of what he considered to be Lieutenant Dowell's opinion was not quite correct.

Summary of his Report.

In paragraph 35 Captain Wingate writes :—"The rights of the khots appear to me to fall very far short of an absolute proprietorship of the soil." In paragraph 36 Captain Wingate refers to the question of *custom*. He writes :—"So strong is the feeling of hereditary right that, even in the case of a village peopled entirely by the efforts of the khot, the lapse of two or three generations would probably suffice to constitute a tenant-right in perpetuity in the opinion of the people; and any attempt on the part of the khot to oust a ryot from a field which had descended to him under such circumstances, however acquired in the first instance, would be viewed as an act of glaring injustice and oppression." He then refers to the case of those dharekaris who had assigned away their rights as superior holders to the khot, and become 'daspatkaris,' &c., "I think for the purpose of preserving their still more cherished right of hereditary occupancy." He therefore seems to have come to the conclusion that, generally speaking, *all* ryots have a claim to permanent occupancy (paragraph 37), but that owing to our Revenue Officers imagining the khots to be proprietors of their villages, and all the cultivators to be merely tenants-at-will, and thus declining to interfere for the adjustment of disputes between the khot and his ryot, the khots gradually acquired increased power (paragraph 39). Before altering this system, and determining what should be the *future* position of the khots, he took two preliminary points for consideration: 1st, the competency of Government to interfere between the khots and their ryots; 2nd, the desirableness of such interference (paragraph 40). The first point he considered evident, since "it is admitted that the rights and privileges of private property may be modified for the promotion of the general welfare of the community. The competence of Government *in its legislative, if not in its administrative*, capacity to regulate the relations of the khot and his ryots may therefore be conceded" (paragraph 41). The second point he demonstrated in two ways, (1) by showing the independent causes of the low condition of the ryots, *i.e.*, the natural poverty of the collectorate, over population, want of manufactures (paragraphs 42 to 45); (2) by showing the ill-effects of the existing relations between the khot and the ryot (paragraphs 46 to 51). "Neither the khots nor their ryots have the advantage of a secure and fully recognised tenure, and there is consequently little inducement to invest capital in improvements." The frequent indebtedness of the khots, and the excessive sub-division of their watans prevent them from being good landlords. Again, the mode of collecting the revenue is essentially bad. "The khot is *supposed* to collect $\frac{1}{2}$, $\frac{1}{3}$rd, or $\frac{1}{4}$th of the produce, but the demand on the cultivator is *practically* only limited by the pleasure of the khot," for he is so powerful that he can make the estimate of the corps just as he likes. Again, the practice

of 'athveth' has a most pernicious tendency, keeping the ryots as it were in a state of villanage.

Proposals of Captain Wingate.

The desirability of interference and the competency of Government to interfere having then been established, Captain Wingate proceeded to state the two courses which he considered were open to Government :—

(1.) To confirm the khot in the absolute lordship of the soil, and of unlimited power over his dependent and starving peasantry.

(2.) To recognise the tenant-right of the khot's cultivators, excepting perhaps in the case of gawik land, and take measures for preserving these rights from encroachment for the future (paragraph 52.)

The first course Captain Wingate did not think worthy of discussion; indeed, it seems outside the pale of discussion. How could the khot be justly confirmed in the absolute lordship of the soil, which Captain Wingate was at such pains to show did not exist, or in rights, which he maintained were acquired by usurpation ?

The object of the second course, *i.e.*, to place the ryots of khoti villages in a position of adequate independence, he thought might be attained in two ways :—

(*a.*) By abolishing the office of khot, and turning khoti villages into kulargi, making all the ryots dharekaris.

This measure, he allowed, would be an extreme one (paragraphs 56 and 57).

(*b.*) By defining the relations between the khot and his permanent tenants, so as to place a limit on the future demands of the former, and thus convert the latter into peasant proprietors holding under a fixed or quit-rent, the arrangement for the cultivation of the gawik land being left to the khot, excepting that no rent in excess of one-half of the gross produce be in any case levied. "This mode of assessment might have the effect of diminishing his rent, and could hardly therefore be equitably carried out without revising at the same time the assessment paid by him to Government" (paragraph 61).

Captain Wingate proceeded to discuss some subsidiary details, such as grain and money rents, communications, &c., and concluded by proposing an experimental survey.

Recognition of tenant right; difficulty connected with the question.

The point which should be especially noticed in the above report is the idea that, "excepting perhaps gawik land," the tenant-rights of the khot's cultivators should be recognised not *created*. Now it was shown above that it is impossible to draw an arbitrary

line and say 'so much of the village land is gawik, the rest is held by permanent tenants.' The fact is that in some villages there may be no gawik, in others all the land may be gawik. Then the question arises, how is one to tell who are permanent occupants, and who are not? Captain Wingate bridged the difficulty by practically considering *all* the tenants to be permanent. He relied on the feeling of hereditary right, which is so strong that the lapse of two or three generations probably suffices to constitute a tenant-right in perpetuity, and so he was "inclined to think that the exercise of a power of dispossession towards the permanent tenants on the part of the khot may fairly be viewed as based on usurpation, whereas the rights of the permanent tenants seem free from any such taint, and to have either been inherited from time immemorial, or to have naturally grown out of their position." Of course, if a cultivator is a permanent tenant, then it is self-evident that to dispossess such a man would be an act of oppression. It is also clear that with regard to the watandar kardes, who were as of old standing as the khot, their tenant-right naturally grew out of their position. But with regard to other cultivators did they possess a tenant-right because they had held their lands for a long time? In other words, what practical effect arises from the influence of custom?

Illustrations from Maine's Village Communities.

Sir H. Maine says in his work on village communities:—"There is no country probably in which custom is so stable as it is in India" (page 9). "What an oriental is really attached to is his local custom" (page 39). Our Revenue Officers fairly recognised the fact. It is not necessary to quote at length how Mr. Pelly wrote that the khot could raise the demands on the cultivator, but the ardheli ryot *generally* paid one-half, &c.; how Captain Ovans wrote to Captain Grant that the badhekaris *usually* pay the ardhel; how Mr. Chaplin described the full powers of ejectment owned by the khot, but added that *custom*, however, appeared to have fixed a limit, and that local usages regulated the rates, and not the limitations of Government; how Mr. Dunlop wrote that the points between the khot and his ryots were settled by *prescription*; how Lieutenant Dowell dwelt on the various *customs*, saying that the kardes were "merely *customers*;" how Mr. Ellis wrote that *custom* had fixed a limit to the khot's demands. Has this custom the force of law? No doubt, as Sir H. Maine has shown (page 110), it is one of the great sources of law—but we want to go further. Sir H. Maine writes (Village Communities, page 184):—"It is strongly asserted by a school of observation and theory, which has many adherents in the present day, that close examination of village communities does not show that mere lapse of time conferred any right on one section of the groups as against another. In Indian disputes, as in many others, the advantage is at

first with destructive criticism, and upon the evidence which I have seen, I am on the whole disposed to think that the school of which I am speaking is in the right. The errors into which it has fallen appear to me to begin at a subsequent point. Some of the adherents seem to think that a certain correspondence being assumed to exist between a certain Indian class and owners of land in England, and a certain correspondence being further assumed between another Indian class and English tenants, the inference invariably follows that the correspondence must be so close as to imply all the incidents of the English relation of landlord and tenant-at-will. But the Indian forms of property in land are founded on the village groups as the proprietary unit; the English forms are based partly on the manorial groups and partly on a state of things produced by its disintegration—systems historically so wide apart can hardly be used even to illustrate one another." Now, if it be remembered (and this is most important) that the constitution of a khoti village is a development of the village community, nay more it is a *near approach to the form of the manorial group*, then there are no such assumptions, as pointed out by Sir H. Maine, in the parallel, and therefore we are much more justified in implying all the incidents of the English relation of landlord and tenant-at-will. It is not necessary here to demonstrate this in detail, but the point especially to notice is that in the west the primitive mode of proprietary groups was converted into the newer system of feudalism, which arose from, or was influenced by, the benefices, or grants of Roman provincial land by the chieftains of the tribes which overran the Roman Empire. But this did not apply to countries like Germany and England, where the cultivated soil was in the hands of free and fully organised communities, and was not, like the land of Italy or Gaul, at the disposal of a conquering king. There was another influence at work by which a group of tenants, autocratically organised and governed, succeeded a group of households, of which the organisation and government were democratic (Maine, pp. 131 to 134). The causes of this influence are numerous (pp. 143 to 146). Thus the mark became changed into the manor.

Correspondence between Indian and English tenures.

Parallel between khoti tenure and feudalism.

Now it has been noted above that in the opinion of our experienced officers all this district was originally kulargi, that is to say, the agrarian system was practically that of village communities. But the country was subject to wars, marauders, &c. So to more easily collect the Government revenue, and to bring land under cultivation, *benefices* were bestowed, in other words, grants were made of khoti watans. Here was introduced a new element into the village. It is very easy to understand how the khot was the headman, the lord of the manor.

The parallel may be pressed still closer without doing violence to facts. Thus, the land in a manor was divided into—

(1.) *Demesne lands*, *i.e.*, that portion kept by the lord for himself or his family.

(2.) *Book-land*, or charter land, held by deed under certain rents and free services, very similar to the free socage lands.

(3.) *Folk-land*, not held by deed, but distributed among the common people at the lord's pleasure, who might resume the occupation thereof at his discretion.

(4.) *The lord's waste*, common both to the lord and his tenants.

The first division answers to what the Survey Officers now call "khoti khasgi," *i.e.*, the land kept by the khot and his family. Number four is disappearing owing to the increasing population and competition for land. The second and third divisions answer to what the Survey Officers now call "khot nisbat," *i.e.*, khoti land cultivated by tenants. As to number two, there can be no doubt. Any land held on a quasi freehold tenure, whether granted by the khot himself or of more ancient date than the tenure of the khot, cannot be held at the pleasure of the superior holder. The tenant must have a right of permanent occupancy.

Copy holders contrasted with Khoti tenants.

But as to the third division the important question arises, what is the position of such tenants? Copy holders (say the English authorities*) were the villains, who by continuous encroachments upon their lords, established a customary right to their lands, which had been held absolutely at their lord's will. They are called tenants by copy of court-roll, because the admissions into their lands are entered on the manor-rolls, and the copies of such entries are witnessed by the steward. Four circumstances are necessary to the existence of a copyhold estate: (*a*) a manor, (*b*) a court, (*c*) the land must be parcel of the manor, (*d*) must have been demised or demisable by copy of court-roll from time immemorial. No copyhold estate can be created at the present day, for the two pillars upon which every custom rests are common usage, and existence time out of mind. In some manors there are by custom copyholds of inheritance; in others, where the lords have been more vigilant, the estates are for life or years only. If the position of an ordinary khoti tenant be compared with the above description, the parallel, it will be seen, does not altogether hold good. Custom, indeed, has been the great element in the tenure of a khoti tenant, and in many cases the estate has been treated as heritable. The status at which in the course of time these tenants might have arrived, may readily be surmised. But to say that their present position is equal to that of copyholders is clearly an error. There is no court, no court-roll,

*Wharton, Stephen, &c.

and, more than all, no existence time out of mind. Indeed, the tenure of many badhekaris must be the very opposite.

But the word "copyhold" also includes the tenures of "ancient demesne" and "customary freehold." These are *privileged villenage, i.e.*, an exalted species of copyhold held according to custom and not according to the mere will of the lord. They may fairly be compared with those *dharekaris*, who originally of course held direct from the State, but now have an intermediate authority, through whom they pay the land-tax, and with those descendants of dharekaris, *i.e.*, *watandar* tenants, who, though they hold by custom, are yet admitted to be independent of the will of the lord. Such is only an outline of a subject full of great interest. Enough has been said to show that in the present case we are not discussing forms of property in land, which are founded on the village group as the proprietary unit, but the system in question is historically allied to the English forms of property.

Illustrations from Maine regarding eviction, &c.

To continue the extracts from Sir H. Maine, at page 185 :— "There are other adherents of the same opinion who, conscious perhaps of the true difficulty, attempt to get over it by asking the peasants belonging to the village community what their customs are as to eviction, rack-rent, and the relation of the landlord and tenant. Now, if there were the faintest reason for supposing that there ever existed in India an open market for land, and a system of competition rents, such an enquiry would be of great importance, for unquestionably cultivating village groups are highly retentive of tradition. But eviction being admitted to have been rarely (if ever) practised, and it being allowed that rent was never paid for the use of land, or (if paid) was not paid on any scale which indicated its principle, to ask a peasant whether a given class of tenants ought or ought not to be subject to rack-rent and eviction is to put to a very ignorant man a question at once extremely complex, extremely ambiguous, and only capable of being answered (so far as it can be answered) after a careful examination of the parallel phenomena of many different ancient systems of law. The reference to the peasantry is doubtless honestly made, but it is an appeal to the least competent of tribunals." And so here: Captain Wingate wrote (paragraph 34) that he was "satisfied of the correctness of Lieutenant Dowell's view of the position of the khot and his permanent ryots, and indeed found that all the khots whom I had opportunities of conversing with privately, during my short visit to the Konkan last season, indirectly admitted that they could not appropriate the land of a karda, or permanent tenant, and give it to another party without the consent of the former." If by 'karda' Captain Wingate meant a *watandar*, then the assertion is self-evident. If the term included badhekaris, who had been settled for a long time in the village,

then the question was one far beyond the comprehension of the khots. They would probably admit that there were many badhekaris treated as watandars, and would plead custom as the rule, but that evidence cannot be used against them, as showing that the badhekaris had a tenant-right. In the same way Mr. Coles wrote (letter to Government, No. 284, 3rd February 1854):—"The khots have over and over again agreed they cannot dispossess a ryot of the field he has occupied for any great length of time, and the custom of the country will prevent his asking more than a certain rent, the maximum being half the produce."

Question of customary and competition rents.

Again, the difference between customary and competition rents must be carefully borne in mind. In a primitive society *custom* is the measure of price (Maine, page 190), and so competition rent is merely customary rent in a more developed stage. It is quite possible that in a primitive society where there is no open market for land, and where eviction is rarely (if ever) practised, there may be no apparent line separating the two. In the earlier stages of the khoti system land was plentiful; indeed the great object was to increase cultivation. At first, then, there could not be competition rents. Afterwards, when land became very valuable, custom, "to which every oriental is a slave," had such a powerful influence that still eviction was rarely (if ever) practised. But one of the greatest changes which has come over the people of India is the growth on all sides of the sense of individual legal right (Maine, page 73), which is owing to the influence of the British Government. We are constructing a law of tenure and tenancy, and men are now asserting their '*rights*,' who in former days would have been content to leave everything to custom. It is therefore of the highest importance that we should examine closely the grounds on which these 'rights' are based. If, on the one hand, we are careful not to stereotype a rule of oppression towards the cultivators, which has been regulated by the powerful influence of the superior holder and by custom, so, on the other hand, is it our bounden duty to be careful that on the ground merely of custom no rights are given to the cultivators, which are inconsistent with the original position of those cultivators in the agrarian community. At any rate, if such rights are granted, compensation should be given to that class of the community whose status is thus lowered by the grant.

The presumption is strongly against the existence of competition rents in a country peopled by village communities (Maine, page 198), but where there have been influences at work, on the one hand the addition of a feudal lord—the khot—on the other the admission into the community of certain classes of people, who did not originally belong to the community—badhekaris—then, as

Sir H. Maine admitted, under the new conditions introduced into India by the English, their rents would probably have become competition rents.

To continue the quotation from Sir H. Maine (page 186):— "The question, what vestiges remain of ancient ideas as to the circumstances under which the highest obtainable rent should be demanded for the use of the land, is of some interest to the student of legal antiquities; although even in this place it is not a question which can be very confidently asserted. The most distinct ancient rule, which I have discovered, occurs in the first of the official volumes, containing the version of the ancient laws of Ireland, published by the Irish Government. 'The three rents,' it says, 'are rack-rent from a person of a strange tribe, a fair rent from one of the tribe, and the stipulated rent, which is paid equally by the tribe, and the strange tribe.' (Senchus Mor., page 159)." Ireland illustrating the Konkan! and yet how true this is. From the *watandar* karda, *i.e.*, from one of the tribe, one who was essentially a member of the village community, a rent fair according to received ideas, or, in other words, a customary rent was taken. This was the *thal*, or share of the produce. From a person of a strange tribe, *i.e.*, from one who was not a member of the village community, but was an outsider, from a *badhekari* a rack-rent could be demanded. Practically, owing to causes explained above, this rack-rent was not distinguishable from a customary rent. From both watandars and badhekaris a stipulated rent was taken, that is to say, the *makta* or *khand*.

Occupancy tenants.

In some cases, no doubt, there has been created between landowner and tenant-at-will an intermediate class of protected, or, as they are called in the east, 'occupancy' tenants (Maine, page 184):— "When under the Government dispossessed by the British, any cultivator was shown to have held his land by himself or his ancestors for a certain space of time, he was declared to be entitled to a qualified protection against eviction and rack-rent. By a recent legislative enactment this principle has been generalised, and any cultivator who even under the British Government has been undisturbed by his landlord for the like period is invested *in some parts of India* with the same protection. The exact period of occupation selected was 12 years." Such is not the case in these parts of India, though many of our officials seem to be under an impression that a tenant-right can be created by prescription. Mr. Coles in his Report No. 204 of 1851 (mentioned above) wrote:—"Our courts of law have been in favour of the khot, and I would beg to refer you to a decision to be found at page 144 of the report of selected cases decided by the Sadr Diwani Adalat, published in 1843, where, although the Collector, whose opinion was taken, seems to

have been in favour of the khot receiving *thal* (share of the produce) if the possession was of any duration, still the Sadr Court gave over possession of the land to the khot; in this instance, however, the ground seems to have been irregularly obtained, and I believe latterly uninterrupted possession of the ryot for thirty years would secure him from being ousted." The case in question is to be found at page 164 of the edition published in 1862 of selected cases decided by the Sadr Diwani Adalat between 1820 and 1840.

Ruling of the Sadr Diwani Adalat.

Plaintiff as khot sued to eject defendants from certain lands, asserting that while he was absent from the village defendants seized it (the village), and following up the unauthorized act made a garden and fields on the lands in question. Defendants pleaded their right to the khotship, and that plaintiff's claim, if he ever possessed any, was nulled by the lapse of time since it was recognised. The Mamledar considered it proved that plaintiff, as khot, had established his right to receive rent, but that defendants could not be dispossessed of the land so long as they paid the usual rent. The Collector in appeal confirmed this decision. He considered that defendants had not proved their right to the watan, but it appeared that they had held possession of the land 17 or 18 years, and the management was carried on by them; he therefore confirmed the Mamledar's decree. A further appeal was made to the Sadr Diwani Adalat. The sitting Judge was of opinion that it had not been satisfactorily shown whether the khot had a right to take such land out of the hand of the party, not being a dharekari, who had brought it into cultivation, or what conditions, if performed, might affect the rights of either. A precept was accordingly issued to the Collector (Mr. A. Elphinston), who reported: "According to the custom of the Suverndrug Taluka, and of the greater part of the zilla, the proprietary right to the whole of the land, not belonging to dharekaris, situated in any khoti village, is *vested in its khots exclusively*. . . . . 2*nd*.—It is admitted likewise by the custom of the above taluka, that the khot's right to take such land (whatever may be its description) from the hands of any person (not excepting even dharekaris), who may have taken possession of or prepared and brought it into cultivation without his (the khot's) previous consent is undoubted, but (as an exception to the rule) it has been usual to show favourable consideration to length of possession, although there are no fixed rules to guide the decision in such cases, still length of occupancy, and the circumstances under which it was obtained, if satisfactorily established, being weighed, it generally determines the continuance of possession to the tenant on his engaging to pay to the khot the usual thal of the produce, or it may be merely on payment of the dhara, the determination of the amount of rental at either of these two rates being dependant upon the circumstances under which the possession was originally

Report by M. A. Elphinston regarding the rights of khots to evict their tenants.

acquired. If, moreover, the possession of such land be satisfactorily proved to be of that consequence to the khot, as to warrant the dispossession of such land from such tenant, the khot is considered liable to the payment of all the expenses the tenant may have incurred. It is also further said that by the payment of such expenses the khot's right to resume such land even in ordinary cases (where the recovery may not be of consequence to him) is absolute, but I beg leave to state that I am not aware of a single instance in which a khot has ever been allowed to exercise it. If, on the other hand, it be proved that the possession of such khoti land was originally acquired by unfair means, when resistance was not in the power of the khot, such a person is, as a matter of course, compelled to surrender his claim and interest in the possession of the land, as well as the amount of expenses incurred by him; *3rd*, from the foregoing it will be perceived that the right of the khot can never be invalidated, but he is not able to exercise this power in its fullest extent to the detriment of others, as Government have always reserved to itself the right of holding to a certain degree a seasonable control over the khot's actions, consequently the practice is governed by expediency."

And the control of Government.

The Full Court treated defendants as interlopers, and following the Collector's report ejected them. A perusal of the above will show how far Mr. Coles was justified in saying "the ground seems to have been irregularly obtained." It shows also on what basis the right to permanent occupancy by "prescription" rested. The right of Government to prevent a khot from exercising his power in the fullest extent seems to belong to a period when men had not become alive to their "vested rights."

Mr. Coles was, moreover, apparently wrong in his law. The opinion about the thirty years' rule seems to have been prevalent. Mr. Loughman wrote, in his Report No. 90 of 1850 (above mentioned):—"From information supplied by the Munsiff of the same place to the Mamledar of Rajapur, it appears that if a tenant in a khoti village can prove occupation of his land for a term exceeding thiry years in duration, he is not ejected by the court." This is not the law as is shown in the case of "Bai Ganga *vs.* Dulabh Parag" (Bombay High Court Reports, Volume V., page 179), where the plaintiff brought a suit to eject the defendant from a piece of land. The defendant stated that he had been in possession for more than thirty years, and that there being no lease or agreement to show the nature of the original tenancy, he could not be ousted so long as he paid rent. The Munsiff and Assistant Judge gave decrees for the defendant. The High Court considered "that the Acting Assistant Judge was in error in throwing out the claim on the ground that the defendant had occupied as tenant for more than

Legal aspect of the question.

High Court Ruling: presumption in favour of tenancy-at-will.

thirty years, for Regulation V. of 1827, Section I., by which he appears to have been guided, is not applicable to such cases. The presumption of law is that a tenant is a tenant from year to year, and therefore, unless there is evidence, or strong counter-presumption of a perpetual lease, the proprietor can oust." And, again, at page 113, Volume VII., Bombay High Court Reports:—"In all ordinary cases the presumption of the law is that a tenant is a tenant from year to year, unless a larger right can be shown by the evidence of a lease or agreement to that effect."

In denoting the opposite of '*permanent tenure*' it is customary always to speak of '*tenancy-at-will.*' Strictly speaking, the term should be 'tenancy from year to year.'

Mr. Coles, in the report above referred to, went on to write:—"In the reports of civil cases from 1840 to 1848 just published, the court in a decision regarding selotri tenure confirmed the possession of the under-tenant as long as he paid his revenue, 'as it was the principle adopted throughout the country between the Government and the cultivator.' Under these circumstances I think it would be found difficult for a khot to turn out a 'kuddeem ryot' (old established ryot) as long as he agreed to pay a fair rent."

Illustration of selotridars and their tenants.

The decision of the Sadr was that the principle adopted throughout the country between the Government and the cultivator being to the effect that the latter, so long as he pays the revenue to Government, cannot be ousted: so selotridars, in the absence of special agreement upon the same principle cannot oust cultivators holding land under them. It appears that the Sadr Court had referred the case to the Zillah Judge to take further evidence whether the selotridars possessed authority under the kowl or grant held by them, and the usage of the country, to oust the defendants. The evidence taken on this point was various, and did not satisfactorily define the rights of the selotridars, but the general opinion formed from reading the evidence was that a selotridar could not summarily oust his under-tenant. So on this general evidence the court decreed as shown above. It should be noted that in this case a revenue officer gave evidence that the land was sometimes entered in the name of the under-tenant, and that the under-tenant could sell his land. The inference is clear then that the tenant had an occupancy right; and that there were some tenants, such as watandars, who were of as old standing in the village as the khot, who had this right, cannot be denied. The view has always been recognised by the High Court. Thus in "Annaji Apaji *vs.* Kasi Atmaji and others" (Bombay High Court Reports, Volume III., page 124), the inamdar sued to eject his tenants. The Senior Assistant Judge said:—"Though the position

of the kulkarnis (defendants) has been that of tenants under the inamdar, there is, I think, reason to believe that their rights as occupants are contemporary with his inam rights (just as in many cases those of the khot and dharekaris), and I do not consider the plaintiff has the right to eject them." This decision was confirmed by the High Court. The Judges wrote:—"In this case it has been shown that the tenants have been in actual occupation of the fields in dispute for ninety years, and that during that time they have paid a fixed proportion of the grain produced to the inamdar. From this long and uninterrupted occupation at a uniform rent, it may be inferred that the land was demised on a perpetual lease, and we hold that in the absence of proof of any lease for a more limited term, as alleged by plaintiff in the plaint, the defendants cannot be ejected so long as they pay the usual rent." Right of occupancy when presumed.

It should be noted here that prescription by itself did not create the tenant-right, but that length of time allowed the inference of a perpetual lease. It seems also that plaintiffs put forward a false lease of the land to the father of one of the defendants.

It has been held that an inamdar is bound to respect all existing tenant-rights, but that the new tenants, whom he or his agent may have admitted, hold only as tenants from year to year (Nasarwanji Hormasji *et al vs.* Narayen Trimbak, *et al*, Bombay High Court Reports, Volume IV., page 125). And an inamdar cannot deprive those tenants of possession, who held the land before the grant, but he may raise the rent, and is not bound to observe the Government rules in regard to assessment. If the rent which he demands is such as to show that his object is virtually to eject the tenant, the case would have to be considered. (Hari Joti *vs.* Narayen Acharya, Bombay High Court Reports, Volume VI., page 23). It is thus evident that the rights of tenants, whose possession was prior to or contemporary with that of the superior holder, were always fully recognised. Mr. J. Melvill in a late case (Dulie Kasam *vs.* Abramji Sale, Bombay High Court Reports, Volume VIII., page 14) wrote:—"There was undoubtedly a usage which has been recognised as having the force of law, which prevented the Government or superior holder from ejecting an ordinary tenant so long as the latter was willing to pay such reasonable assessment as might be demanded of him." This is an enunciation of "the principle adopted throughout the country between the Government and the cultivator" (see the Sadr case quoted above), viz., that Government, as superior holder, cannot eject an ordinary tenant as long as he pays the assessment. By 'ordinary tenant' is meant one who does not hold under a lease for a term of years or on sufferance. And so with the case of *any* superior holder and tenant, the question would be whether Relations between an inamdar and his tenants. Principle adopted between Government and the cultivator.

the tenant has himself any proprietary right in the soil; this might be inferred from his possession being anterior to that of the superior holder, from his having improved the land, &c.

The reasonable and fair rent is the rent according to the custom of the country, as can be shown from many cases (compare case at Bombay High Court Reports, Volume VI., page 12). There are two cases at pages 97 and 477 of Volume IX. of the Sadr reports, in which a khot sued his tenants for rent; but there is nothing to show whether the tenants were watandars or badhekaris, and the form in which the suit was brought does not necessarily lead to the inference that the defendants had a tenant-right. Instances can be met with where a landlord prefers suing his tenant-at-will for rent rather than to eject him.

Result of these considerations.

The result of all these considerations is that while watandars have naturally from their position a tenant-right, and cannot be ejected as long as they pay the customary rent, on the other hand badhekaris have no such right inherent in their tenure, that in the absence of special agreement the rent to be demanded from them would be the customary rent, but that their landlords have a perfect right, after due notice, to demand a higher rent or to eject them.

Mr. Townsend's opinion on Captain Wingate's Report.

To return to Captain Wingate's report. It was forwarded to Government by the Revenue Commissioner with his letter No. 1192 of 10th March 1851. That officer considered it would be superfluous at the present stage of the matter to enter into any minute questions whether and how far Government should interfere with their tenants (paragraph 10):—"The ryots of the Konkan are of various classes, and the same rules will not apply to all. The dharekaris and the mirasdar Mhars are of more ancient standing than the khots themselves, and their rights are or can be clearly defined. Of the other ryots some have rights which, if not so clearly defined, yet do exist, and should be inquired into and protected, in order that their subjection to the khot may not, in practice, be as complete as that of tenants-at-will, put in by him or his ancestors, and who have subjected themselves to any terms which the khot chose to impose."

It is thus clear that Mr. Townsend drew a clear line between the watandars and the badhekaris. He fully admitted that it was necessary to define the respective rights of the khot and his tenant, but he hoped "that the fact that the former have 'rights' as well as the latter, will be borne in mind."

Opinion of Government on the above. Need of legislation.

The Government letter to the Revenue Commissioner on the report is No. 10555 of 8th November 1851. Government authorised survey operations being undertaken, "but in the opinion of His Lordship in Council practical effect cannot be given to

a settlement in khoti villages and kicheri (mixed) villages without the aid of legislation. Putting aside the difficulty of obtaining true information as to the respective rights of the khot and his permanent tenants and his tenants-at-will, and the extent of landed property assignable to each, and supposing that all these particulars were ascertained, Government could not, by so doing, define the relations of these parties, or put a limit on the exactions of the khot for the future; and unless this can be done, the Governor in Council quite agrees with the opinion expressed in Captain Wingate's report, that it would be a waste of time and money to undertake the proposed survey at all. To what extent it may be desirable to define or modify the relations of the khot and his tenants by legislative enactment, His Lordship in Council is not at present prepared to say; but for the purpose of affording fuller information in regard to this point, he is of opinion an experimental survey of some villages is required."

Reference is then made to Regulation VII. of 1822 of the Bengal Code, which "reserves to the administrative authority the privileged power of determining and directing which of two parties, possessing interests of different kinds in such properties, shall be admitted to engage for the Government revenue, and of securing the rights of the remaining parties, as well as of prescribing the manner and proportion in which the net rent or profit, arising out of the limitation of the Government demand, shall be distributed among the different parties, possessing an interest in the lands appertaining to a Mahal. Similar powers to those here mentioned are indispensable to any satisfactory settlement of khoti villages, and though the administrative authorities here might be considered competent to exercise such powers without the intervention of legislation, on the ground of settlements having been made at various times by former Governments, the Governor in Council is of opinion that the most eligible course would be to place this beyond doubt, by conferring the requisite powers by legislative enactment." Among these powers should be included "the determination of the rents to be paid by the permanent tenants to the khot, and the assignment to the latter of a percentage in lieu of all claims (and this whether or no it is found desirable to collect the rents direct from the ryots instead of through him), and to declare the occupancies of these ryots while in permanent occupancy, and possibly also of the tenants-at-will, to be transferable and saleable at their own pleasure, and also in satisfaction of the dues of Government or of the superior holder."

Right of Government to interfere between a khot and his ryots.

Captain Wingate had written that "the competence of Government in its legislative, if not in its administrative, capacity to regulate the relations of the khot and his ryots may therefore be conceded;" but Government considered the administrative capa-

city to be '*doubtful*.' The ground of the supposed competency was the fact that settlements had been made at various times by former Governments. What were these settlements? A new survey was made, and the payments of every khot and dharekari altered where necessary (compare paragraph 13 of Mr. Townsend's letter quoted above). For instance, Mr. Dunlop proposed a new survey in the case of the Suverndrug dharekaris (to whom allusion has often been made), because a dharekari pays an assessment which is fixed by Government. Surveys were proposed of khoti villages in order to bring under assessment lands which had been waste at the time of the last survey; but there is not a single instance of any Government at the time of a survey having regulated the payments between a watani khot and his ryots who were not dharekaris. Those tenants were not recognised; their names were not entered in the Government papers. "Government does not know what the ryots actually pay" (Mr. Chaplin's report of 1821). And it was just this circumstance of which Mr. Dunlop and other revenue authorities complained. And this is the difference between the Konkan and the North-West Provinces. Mr. Colvin, in his memorandum (brought out last year) on the revision of settlements in the North-West Provinces, shows how the middlemen—the zemindar, talukdar, or whatever he might be called—grew out of the necessities of a weak administration, and that the rates at which he was allowed to collect the revenue were not fixed by him, but by the power to which he was subordinate. The khot, too, grew out of the necessities of a weak administration; he was found to be a useful agent in collecting the Government revenue, but *besides this* he was found to be useful in bringing waste land under cultivation, and the rates at which he was to collect revenue from new ryots whom he introduced were *never* fixed by Government.

Difference between the Konkan and the N. W. Provinces.

As to the custom of the Peshwa's Government, the point was discussed in considering the first division of this enquiry. Even with the British Government the difference between administrative and legislative interference has only been given effect to of late years. In the earlier days of our administration, from 1818 to 1828 (as has been shown when considering the second division of this enquiry), the Government (and its officers) always seemed to think that it could interfere and abolish "rights" where necessary, giving due compensation without the aid of legislation. But it seems to be a maxim fully recognised now that Government cannot, in its adminstrative capacity, modify or destroy any "rights" whatever. It is easy to understand how in former days this point was not considered important. Formerly every native thought that whatever the "Sarkar" said was *law*, and no one thought of doing such a thing as asserting his rights. But the

Difference between administrative and legislative interference.

influence of the British Government has been to change this. "The definition of rights which it has effected through its various judicial agencies—the process of law by which it punishes violations of rights—above all, the money value which it has given to all rights by the security which it has established from one end of India to another—have all helped to make the classes in possession of vested rights cling to them with daily increasing tenacity." (Maine's Village Communities, page 167). When then Mr. Hale wrote that under the measures he proposed taking the cultivators would be protected, even where the zemindars were the exclusive proprietors of their villages (he did not say how the protection would be afforded), when Mr. Elphinston wrote that Government always reserved to itself the right of holding to a certain degree a seasonable control over the khots' actions, and when Mr. Robertson thought that the right of Government to re-assess the revenue included the right to interfere between the khot and his ryots, these officers seemed to have lost sight of the maxim stated above. What Government in its administrative capacity can do, is to recognise and define existing rights. Thus Mr. Reid proposed a survey in order to define the rights of those who are not mere tenants-at-will of the khot. Mr. Turquand, as will be shown further on, thought that, as the khots held their villages under a limited contract, that is, on condition of paying the Government revenue which might be altered at the time of a general survey, Government might, in the exercise of its paramount authority, limit the demands of the khot from his tenant. But he did not express the opinion with any certainty, and in the present day such an argument would meet with very little support. At any rate, it would be advisable for Government not to attempt any course of procedure, capacity for which is "doubtful."

Lt. Kemball's first report on the survey.

To return to history, Government sanctioned an experimental survey under Lieutenant Kemball, and accordingly the next document to examine is the report made by that officer, dated 13th September 1852, to Captain Wingate, giving an account of the operations he had made during the first season. The points to be noticed are as follows :—

Para. 4.—He considered that the khoti and kulargi systems may in many points of view be regarded as one system in different stages of development. This is just the view held by former officers, as Mr. Dunlop, Lieutenant Dowell, &c.

Para. 6.—"The distinctions Lieutenant Dowell in his report describes as existing between different portions of the land under the names of gawik and gayalli, &c., appear to me to have been lost sight of; the khots seem to exercise over the whole, with the exception of the little rice land left to the Kunbis, very generally

the same privileges. Notwithstanding the vague and undefined position of the khot, the powers and privileges he exercises, and lays claim to exercise, I am, from all the information I have gathered on the subject, clearly of opinion that his hereditary rights are limited to the office, and do not extend to the land."

Para. 23.—"With regard to the practice between the khots and their Kunbis, and the rights, length of tenure, payments, &c., of the latter, it is most difficult to obtain any trustworthy information. They cling perseveringly to their small patches of rice, it is true, and their tenure of them is in a measure undisputed, but on the warkas I cannot understand that they have any defined rights." Lieutenant Kemball concludes by hoping that the two great questions which press for settlement, *i.e.*, that of the khot's position with respect to Government, and the Kunbis with respect to the khot, may very shortly be decided.

Captain Wingate's report on the above: need of legislation.

Lieutenant Kemball's report was forwarded by Captain Wingate to Mr. Coles with a letter No. 357, 18th October 1852. In paragraph 3 he urged the necessity of a legislative enactment "to confer the requisite powers on the settling officers," and in paragraph 61 the same: "For should any of the sharers in a khoti watan object to the settlement, and refuse to abide by it, the whole operations would either be brought to a dead lock, or the interests of the recusant parties would have to be attached, and taken into Government management, or transferred to others at the risk of being made the subject of litigation in the civil courts. On the other hand, were the necessary powers for proceeding with the settlement secured by timely legislation, all parties would be convinced of the futility of factious opposition, and be disposed to accept the settlement without hesitation."

The especially important part of the report begins at paragraph 39:—

His opinion as to the right of the khots.

"In my former report I have discussed at length the questions as to the respective rights of the khots and their cultivators, and have stated my conviction that the intervention of Government to define these relations, and place the tenures of the cultivators in khoti villages on a secure and satisfactory basis, is absolutely essential to the success of any settlement. Further reflection on the subject has deepened these convictions, and led me to the conclusion that the rents, payable by cultivators in khoti villages, must be regulated at the survey to afford the settlement a chance of success. We need not, I think, hesitate at adopting this course on the score of doing injustice thereby to the khot. The rights of the latter appear from all the evidence collected on the subject to have been originally limited to the collection of the Government dues, and to this day they do not extend beyond the collection of the

rents and cesses payable by the ryots in accordance with the custom of the village. Lieutenant Kemball, who made many enquiries on the subject last season in the course of the survey, has arrived at the same conclusion, as will be apparent from consulting the 6th paragraph of his report (quoted above). The khot in fact has managed the village as an hereditary farmer, and in consequence of no interference having been exerted on the part of Government, has been allowed to levy the assessment without any further limit than may have been opposed to his exactions by the resistance of the ryots and their adherence to usage. It will be found, I believe, that the rice and garden lands of khoti villages have generally been divided into separate occupancies, which are held by the parties in possession quite independently of the khoti watan. The holders of these occupancies either pay revenue to the khot, or, as is sometimes the case when they themselves hold a share of the khoti watan, they pay nothing, the exemption in this case forming part of the profits of their share. But the rents in all cases, and not the land, form the khoti watan. And in all the mortgage deeds executed by the khots it will be found that the mortgage refers to a share of the watan, or the right to the rents and profits of the village generally, but never to the possession or ownership of a definite and describable portion of the village lands. Particular pieces of land are occasionally mortgaged by a khot, but such land is invariably, if I mistake not, mortgaged as the private property of the individual, and not as a portion of the khoti watan. The mortgagee, with a view to secure his own interests, has the mortgage deed worded in as comprehensive and also specific terms as possible, and if the khoti watan comprehended the ownership of land (inclusive of a right of occupation), I have no doubt whatever that this would be particularly described." A mortgage deed is then mentioned of two shares in a khoti watan: "It describes the khoti watan as extending over land cultivated and uncultivated, single and double crop, taxed and untaxed, all the lands, gardens, and yards, houses and buildings, water-courses and water, rivers, nallas, trees, tenants' labour, dues, &c., but the nature of the watan rights over all these items is not distinctly specified. They are to be inferred from the subsequent part of the deed, in which the mortgagor, who by the deed sinks into the position of an ordinary khoti ryot, engages to pay for the rice land he cultivates himself, as may be settled by agreement between himself and the mortgagee, and for the warkas as a choutheli, *i.e.*, at the rate of one-fourth of the crop. He engages also to refrain from cultivating the lands of the tenants (Kunbis), or if he should cultivate them to pay the same rates they do. From these provisions, and the general tenor of the deed, it is, I think, clear that it is the

As shown by mortgages.

management of the village, and not the land, which is the subject of mortgage, and forms the khoti watan."

Concurrence of Mr. Coles with the above opinion.

The Collector, Mr. Coles, in his letter to Government, No. 2265, of 25th November 1852, wrote on this point (paragraph 10):—"I perfectly agree with Captain Wingate that from all we are able to learn the khoti watan is restricted to the revenue of the village lands, and cannot be considered as conferring any proprietary right in the lands themselves."

Dissent of the Revenue Commissioner.

The Revenue Commissioner's letter to Government on the subject was No. 3173, of 29th December 1852. He wrote on this point (paragraph 5):—"It is very possible that the original position of the khots may have been what is here stated, and their rights limited to the office alone; but in considering the question we cannot, I am of opinion, altogether overlook or disregard their position at the present day, or avoid considering in what respects the lapse of more than a century may have served to create a sort of prescriptive right to something more than the narrow limits by which the original watan may have been circumscribed. I do not mean to say that usurpation, sanctioned though it may have been by long usage and precedent, and tacitly at least admitted, can ever become absolute right, or that property can acquire by frequent change of hands in mortgage and sale, or by being readily convertible into money, a title which in the first instance it wanted, but at the same time such circumstances cannot but, it appears to me, enhance the difficulty of dealing with the question, and render the interference of Government at this distance of time, with a view to determine the exact point at which right ends and usurpation begins, a subject of more than ordinary embarrassment." He then noticed the mortgage deed (quoted above), "which to my mind serves to show that much more than a mere hereditary right to the office of khot is, in the present day at least, arrogated to themselves by the khots, and made subject of barter and sale." He proceeded—"It seems to me a question whether before Government pledge themselves to consider the khots no more than mere hereditary farmers of revenue, it would not be advisable formally to call on them to prove their right to be viewed in any other light."

Resolution of Government on the above.

The Government Resolution on the above correspondence was No. 1937, of 31st March 1853.

Paragraph 5, &c.:—"Mr. Coles agrees with the Survey Commissioner in considering the rights of the khots to be limited to the revenues of the village lands, and not to amount to a property on the lands themselves. This view of the case is also borne out by the opinions of the Revenue Officers, recorded in the correspondence which accompanied Captain Wingate's former report of 30th January 1851, No. 44. The proposed settlement

appears to provide sufficiently for the Revenue Commissioner's view of the case, as the khots are to be confirmed in the occupancy of all lands to which they can prove their title. The settlement, moreover, proposes to assign to them 10 per cent. 'malekhana,' as it would be termed in the North-West Provinces, in lieu of all pre-existing rights and usages which are not recognised by the settlement. Past practice with regard to the abolition of objectionable customs and imposts in khoti villages did not recognise the right to any compensation. It is likewise to be recollected that ryots of khoti villages also claim a right of property in the lands they occupy, and, as far as weight of authority goes, with greater justice than the khots; any settlement must be in the nature of a compromise, and the one now proposed seems abundantly liberal to the khot, and is likely to raise rather than lower the value of the watan."

Question of the khot's proprietary rights.

It was thus distinctly laid down that the khot had *no proprietary right in the land*, and Government said that the authorities quoted by Captain Wingate bore out this view. All the authorities in question have been fully examined in the pages of this enquiry, and the reader can test the truth of this assertion. What Captain Wingate himself recorded was that " the rights of the khots fall very far short of an *absolute* proprietorship of the soil " (paragraph 35 of the printed report), not that they have *no* estate in any of the lands besides those occupied by themselves. No doubt the khots were originally and are '*farmers*' (see Government Resolution No. 33, 10th January 1825, quoted in paragraph 25 of his report). But it appears to be a mistake to think that therefore they were the farmers of the revenues only, and that Government employed them merely to collect the revenues of a village, the amount due from each cultivator being fixed by Government. Such, no doubt, were the khots north of the Bankot river. Such, it seems, were the zemindars in the North-West Provinces. Such, in a measure, were the khots of purely kulargi villages. But a sanadi watandar khot—one who may have brought all or most of the lands of the village under cultivation, one to whom reverted the lands of even a watandar ryot, who left the village, one who may have spent large sums of money in improving the lands, such a khot must have some property in the lands of the village; this is the view subsequently taken by Government.

A khot the farmer of his village.

A khot is a *farmer*, but he is the farmer of the village, not simply of the revenues. The granting authority did not say (with regard to the khots now under discussion), 'the revenues of this village shall be your watan,' but 'the village shall be your watan.' Some ryots in that particular village may have had rights of property in the lands they occupied. The rights of such ryots then

the khot would be bound to respect. If the khots had no property in the warkas land, then who had? For Lieutenant Kemball did not understand that the Kunbis had any defined rights on this kind of land.

Captain Wingate said that *to this day* the rights of the khot do not extend beyond the collection of the rents, &c. That officer seems to have forgotten the other rights, such as of reversion, &c.

The terms of a mortgagebond discussed.

Captain Wingate said that mortgage deeds never recited the ownership of the lands, and then quoted a mortgage bond, in which the khoti watan is described as extending over all the land, cultivated and uncultivated, &c. He considered that these words were qualified by the subsequent part of the deed; but the subsequent part shows that the khot must have had some property in the land. For the agreement made with the mortgagee was that the mortgagor should pay chouthel on account of the lands in his own occupation. But the mortgagee was afraid that the mortgagor, on the strength of his position as khot, might eject some of the ryots in the village from their lands, and occupy them himself, and so he, the mortgagee, would lose the difference between the ardhel or tirdhel, which the ryots paid, and the chouthel which the khot agreed to pay; so he bound down the khot not to cultivate the Kunbis' lands, or if he did, to pay at the same rate as they did. From these provisions Captain Wingate drew his conclusions.

As to the assertion that past practice with regard to the abolition of objectionable customs did not recognise the right to any compensation, the letter from the Court of Directors, dated 23rd May 1827, seems to have been lost sight of.

Captain Wingate's proposed settlement.

To return to Captain Wingate's proposals for a settlement. They may be thus summarised:—

(1.) To make the holders of rice and garden lands (generally the khots themselves), 'occupants,' giving them a secure title.

(2.) To make grants of portions of the warkas land at present common rather than private property. Such grants to be afterwards treated as the rice and garden lands.

(3.) To define all the ryots' liabilities, appoint tallatis to keep accounts, to abolish *veth* and all cesses.

Paragraph 57:—"The plan of settlement which I have here sketched out would curtail the present power and privilege of the khots, but not to so great an extent as might be imagined. They would become responsible as occupants for the survey assessment of all the lands entered in their names at the survey settlement, but they would be at liberty to manage this land without interference. And the land, which they will continue to possess as occupants

under the survey settlement, will generally be the most valuable in the village. They will be deprived of all proprietary rights over the remainder of the land not in their occupation,* but these rights are in most instances of very little value. They will be forbidden to exact labour without payment from the Kunbis or others, or to make levies of any kind whatsoever on the score of these being the customary perquisites of the khots. They will be deprived of all power of interfering in the management of the village when not themselves officiating. In consideration of this loss of privilege, and possibly of profit too, it seems equitable that the khots should receive some compensation. . . . . In all cases in which the assessment of a khoti village may be reduced by the survey, in addition to the benefit of this reduction, 10 per cent. of the new rental should be assigned to the khoti watan. In cases in which the assessment may be increased, no increase should be made to the khoti payment to Government, unless the difference between these payments and the survey rental amount to 20 per cent. of the latter."

Mr. Coles' opinion of the same.

Mr. Coles wrote on the above (paragraph 12): —"The proposal to declare the present holders of rice and garden lands in khoti villages those with whom the settlement should be made will be objectionable to the khots, but I believe it will be perfectly just, if care is taken that only old residents are recognised as occupants, and not badhekaris, and those who have not a claim from long residence to be considered watandars of the soil." (It is thus clear that Mr. Coles drew a distinction between the permanent tenants, and the tenants-at-will.) He approved of the 'compensation' proposed by Captain Wingate, and urged the necessity of a legislative enactment.

The Revenue Commissioner's letter and the Government Resolution have already been noticed, as far as is necessary for this enquiry. The only point to call attention to is that it is hard to understand how confirming the khots in the occupancy of the lands, which they themselves cultivated, could ever be considered in the light of a *concession* to the khots, or act as a *compensation*. Survey or no survey, the khots were firm in their occupancy of these lands.

Captain Wingate's Draft Act.

On the 17th June 1853 Captain Wingate, with his letter No. 366, forwarded to Mr. Coles a "Draft Act," which he had prepared in order to legalise the operations of the revenue survey. Mr. Coles returned the draft with his letter No. 1014, 12th July 1853, having made a few alterations. It is unnecessary to give in detail the provisions of this Bill, but mention of one or

* Captain Wingate then seems to have thought that they had some proprietary rights.

two points will illustrate this enquiry. The Act it seems was intended to apply to the whole Presidency, and to contain provisions for "summary settlement" (which were afterwards embodied in Bombay Acts II. and VII. of 1863). Part of the preamble ran: "Whereas the system of revenue management required for a field assessment is not applicable in all its details to the cases of villages or considerable estates managed by individuas or shareholders as superior holders, who possess or claim a hereditary right of settling for the revenues of their villages or estates in the gross; and whereas experience has proved that the tenures of such superior holders as the khots of the Konkan Collectorate, the Talukdars of Guzerat, and also the tenures referred to in Section VIII. of Regulation XVII. of 1827 of the Bombay Code, require definition in order to the better understanding and establishment of the relations, which under the revenue survey settlement are to subsist between such hereditary managers of villages or estates, and other parties possessing or claiming rights of property in the land of the said villages or estates, &c." It is thus seen that the tenures referred to in Section VIII. of Regulation XVII. of 1827 were considered distinct from khoti tenure.

Preamble.

Definitions.

The following are some of the definitions in the interpretation clause:—"The word superior holder or manager signifies a person who contracts with the revenue authorities for the revenue of any estate in the gross, and levies assessment or rent from inferior holders, or tenants, or cultivators of the land comprised in the said estate, according to written agreement, usage, or the terms of his engagement with the revenue authorities, or all or either of these combined. The word occupant means a person who has engaged with the revenue authorities for the payment of the assessment of a specified area of land, and is the person recorded in the public accounts as the person responsible for this payment. The word inferior holder, or tenant, or cultivator is applied to a person having possession of land, or of some interest in it, who does not engage direct with Government for the payment of the assessment for which his land is responsible."

Section 11 *et seq.*

Section 11 provided for the settlement of khoti villages: "When it has been customary for the revenue authorities to settle for the land revenue of any taluk, village, or other description of estate in the gross with a single superior holder or with several superior holders. . . . . , and the whole or any portion of the land of such taluk, village, &c., is possessed by other parties having a heritable and transferable property therein, or a right of cultivation subject to the payment of a rent, or assessment, *which is not alterable at the will of the superior holder*, it shall be competent to the Governor in Council to authorise any survey or other officer,

who may be entrusted with the settlement of the assessment, to specify and determine the terms and conditions on which such inferior holders shall pay rent or assessment to the superior holder, or to any other party duly authorised to receive the same under the revenue survey settlement." Subsequently Mr. Coles, for reasons which will be shown afterwards, wanted the section to be altered so as to run....., "and the whole or any portion of the land of such taluk, village, &c., is possessed by other parties, *bieng inferior holders, but* having a heritable and transferable property therein, or a right of *occupancy* and cultivation thereof, *so lony as they pay the assessment limited by the custom of the country*, it shall be competent to the Governor in Council to invest any survey or other officer, who may be entrusted with the settlement of the assessment, *with power to determine such right of succession and transfer of property, or such right of occupancy and cultivation of land as aforesaid*, and also to authorise such survey officer, &c."

Section 12 provided for the abolition of '*veth*' and objectionable cesses.

Section 13 provided for *compensation* to the khots by abatement of the full assessment.

Section 14 provided for the management of khoti villages under attachment.

Section 15 allowed the *redemption* on behalf of Government of a khoti estate which had been under attachment for three years and more, in which case (under Section 16) the inferior holders and cultivators might be made occupants.

Lt. Kemball's report of 1853.

On 27th August 1853 Lieutenant Kemball forwarded to Captain Wingate a report of his proceedings in the attempt to introduce the survey settlement into three villages. The attempt was unsuccessful, and the proceedings were suspended until legislation and fuller instructions from Government should convey the authority requisite to overrule the obstacles. The chief objection raised by the khots was to the entry of the Kunbis' names as 'occupants' at fixed rates.

Difficulty regarding the cultivators' rights.

The principal difficulty which Lieutenant Kemball felt was that of distinguishing clearly between the right of property in land and the right of engaging for the Government revenue due upon it, and he doubted whether the "Draft Act intended to define at all the rights of property in the land as advanced either by superior or inferior occupant. It is generally, though perhaps not universally, held that the custom of the country secures a cultivator in his title as occupant so long as he discharges the rent, but the khot nevertheless claims to cultivate under certain circumstances such occupancies himself, and denies almost without exception the right of the

occupant to transfer his occupancy to a third party; either point, or indeed any other supposed to possess the support of custom, might, and probably will, be made a subject for future litigation by the khot, in order to regain his hold upon the occupants of the land; and bearing in mind that the customs are vague, and vary much in different parts of the country, it is, I conceive, very doubtful whether in such cases two persons equally impartial would arrive at the same conclusion without obtaining some clue to the understanding on which the settlement was conducted." He, therefore, considered that the enactment should distinctly declare that the parties recorded as inferior occupants at fixed rates of assessment possessed a heritable and transferable interest in their land under the new settlement: the definition would deter both parties from litigation. He was also of opinion "that the settlement should be permanent in relation to the land rather than to present occupants; that when fields assesed at the survey lapsed to the khot's management, he should be limited as before to the collection of the simple assessment, though he would be at liberty to record himself (or any sharer) as occupant: whoever might be registered as 'occupant' should be viewed as proprietor of the occupancy."

Mr. Coles' opinion on the above.

A copy of this report was sent to Mr Coles, who, in his letter No. 1409, 7th September 1853, forwarded to Captain Wingate his views thereon. He considered that the real question was "who is to be considered the owner during the time of the lease of the survey number," and in his opinion the best plan was "to amend the present state of the kunbis by giving them at all hazards a heritable and transferable right in the lands they now hold." He, therefore, advised an alteration in Section 11 of the Draft Act (as shown above) to enable the survey officer to determine who should be the permanent occupant. Mr. Coles did not agree with Lieutenant Kemball that in the event of fields lapsing to the khot he should be restricted in subletting them to the assessment fixed by Government.

Capt. Wingate's opinion on the above.

Captain Wingate forwarded Mr. Coles' and Lieutenant Kemball's reports to the Revenue Commissioner with his letter No. 661, 19th September 1853. He was of opinion "that the limitation of the Government demand to a fixed assessment, realizable under the rules prescribed by the plan of settlement, will give great additional security to private rights, and constitute land everywhere a saleable and transferable property, but the provisions of the Draft Act were not intended to define the interests of individuals in connection with land, except in so far as they are connected with the realization of the land revenue under the survey settlement." He therefore considered Mr. Coles' amendment of Section 11 unnecessary. He proposed that the Collector should be empowered to introduce the settlement experimentally in some other kulargi vil-

lages, and also in any khoti villages that might be under attachment, or for which the khots might agree to accept the terms of the survey settlement, and to relinquish all proprietary right over the land recorded in the names of inferior holders.

Government, in Resolution No. 1354, 14th March 1854, approved of this proposal, and with reference to the other points stated that the provisions of the Draft Act were under consideration.

In April 1854 Mr. Coles left Ratnagiri, and was succeeded by Mr. Spooner, and in June Lieutenant Kemball resigned his appointment. In August 1854 Mr. D'Oyly was appointed Settlement Officer (Lieutnant Waddington being Survey Officer), and accordingly in January 1855 the survey rates were introduced into the two kulargi villages of Kolumbé and Bagagashi, and the khoti village of Tiké, which was under Government management owing to disputes among the khots. With the kulargi villages there does not seem to have been much difficulty, but with regard to Tiké there was endless correspondence. In 1855 Mr. Turquand came as Collector to Ratnagiri (Mr. Goldfinch acted for him during a temporary absence from June to December 1855), and the files are full of protests from this officer against the scheme as planned by Captain Wingate.

Difficulty regarding warkas.

The first difficulty which arose was with regard to the warkas land. The great object of the survey was to amend the status of the cultivators and give them a hereditary and transferable right in the lands they tilled. But nearly all the land held by the khots' ryots was warkas, and Captain Wingate's plan with regard to this description of land was to lease it *in the lump* to the khot, who should levy from the ryots rates in kind not exceeding one-third of the produce, or money payments by written agreement. It was contended that by this plan the ryots would be just as much in the power of the khot as before, and that their hereditary and transferable rights would be a nullity. Mr. Turquand therefore proposed (letter to Revenue Commissioner, No. 475, 21st May 1855) that the warkas should be leased in a lump to the ryots. Lieutenant Waddington (Memo. to Collector No. 61, 11th June 1855) fully agreed with Mr. Turquand "in favour of allowing the *permanent occupants* the option of agreeing for the lease of the warkas; failing their doing so, it might be offered to the khot. At the same time it must be remembered in many villages there is a great deal of warkas, in which no right of occupation is even claimed, and which the khot is in the habit of letting out by the year or for a term of years to the badhekaris of his own or neighbouring villages. The khot should therefore be entered as a sharer to the extent of all warkas land, not claimed by permanent occupants." But Mr. Goldfinch reported (No. 978, 24th September

Proposals of Capt. Wingate,

Mr. Turquand,

Mr. Waddington,

1855) that the ryots of Tiké (under the influence of the khot) would not take the lease of the warkas in a lump, and he advocated the necessity of measuring such land into large numbers, from fifty to a hundred acres. Mr. D'Oyly being called upon for his opinion on this measure reported (No. 139, 18th December 1855) that either one of two systems must be followed :—

and Mr. D'Oyly on the subject.

(1.) Measure the warkas into large blocks of not less than one hundred acres with arbitrary boundaries. This plan would be attended with but little expense, but would be of no use. It would be almost impossible to record who were the occupiers of the culturable plots within the blocks.

(2.) Let each plot of culturable ground be measured, mapped, and entered in the name of the cultivator, as in the case of garden and rice land. This plan would entail too great labour and expense, and there would be the same difficulty in ascertaining the names of the occupants.

Resolution of Government on the above.

Government in Resolution No. 4268, 11th October 1855, in approving of the application of the survey rates to the three villages above mentioned, ruled that the warkas cultivators should be treated in the same manner as those in kulargi villages, *i.e.*, that the warkas should be leased to them. This of course did not solve the difficulty, and Mr. D'Oyly pointed out in his letter to Government, No. 133, of 12th December 1855, that the security of the tenure of the cultivators of warkas land was not increased, and that there was nothing to prevent the constant occurrence of disputes regarding the right to cultivate particular portions of warkas. The point does not seem to have been taken up again.

Mr. Turquand opposed to legislation.

In the letter last quoted Mr. D'Oyly stated that the survey could not be effectually introduced without legislation; and Mr. Goldfinch in his letter to the Revenue Commissioner, No. 744, 21st July 1855, took the opportunity of entreating him to hasten by every posssible means the passing of the Act. But this does not seem to have been the opinion of Mr. Turquand, who wrote two letters, No. 430, 9th May, and No. 475, 21st May 1855, on Mr. D'Oyly's report (No. 29, 23rd March 1855) regarding the introduction of the survey into Tiké. He thought the survey might be worked without the Act if it were *gradually* introduced, first into dharekari and then into khoti villages—not at first into a village like Tiké, which was under Government management, simply owing to disputes among the khots. He insisted "that the circumstances under which the survey was introduced into the Deccan were diametrically opposite to those existing here," more especially as regards the warkas cultivation. Mr. Reeves, the Revenue Commissioner, in recommending to Government (No. 2132, 25th July 1855)

Opinion of Mr. Reeves.

the introduction of the survey rates into the three villages above mentioned, wrote:—"It is clear that the opposition of the khots originates in a wrong-headed conviction of their own rights. They say they are proprietors of the land, while Government and everybody else maintain that they are mere managers of the revenue." This was not the view of Mr. Turquand, who wrote two long reports to the Revenue Commissioner, Nos. 75, 19th January, and 142, 12th February 1856, against the settlemant of Tiké. He wrote:—"I beg most deferentially to warn Government against adopting, in opposition to the sense of the people of this collectorate, Captain Wingate's views of the position and rights of the khots, for they would seem correct and just, only as regards one class of khots and not as regards the others. . . . . Where the khot of the Konkan was interposed between Government and the proprietary cultivators, as in dharekari and kicheri villages, of course he, so far as regards the dharekaris, or proprietary cultivators, is only a farmer, for the former Government, which in its inam grants so studiously reserved all existing rights, proprietary and of a permanent occupancy, could never have meant by the creation of khots to thereby affect the rights of the then existing tenants or occupants of the soil. But when at the creation of khots there were no classes either of proprietary cultivators or permanent tenants, where, if Government were to make the ryots proprietors, they could not claim it as a revival of dharekari tenure antecedent to the khot's creation, where, in short, the villages were settled and peopled by the khots themselves with cultivators brought by themselves, I certainly think we should not be doing to these khots as we would be done by in constituting them mere farmers, for I conceive they are equitably entitled to be considered proprietors." Not that he thought the khots absolute proprietors, for he wrote: "Who is an absolute proprietor where Government is Paramount Landlord?" He thought that the relative claims of the khots, the ryots, and Government should be *equitably* settled, giving the khots compensation for the loss of some of their proprietary rights, (as the continuance of *all* their rights was opposed to the well-being of the body of the people), and making the ryots proprietors.

Views of Mr. Turquand opposed to Captain Wingate.

Difference between khots of Khoti and Dharekari villages.

Mr. D'Oyly reported to Mr. Turquand (No. 22, 19th February 1856) that "no distinction is shown in the survey records between the different classes of tenants (*i.e.*, tenants-at-will, hereditary and non-hereditary cultivators, and proprietors), the survey being intended to convey on each person entered as a tenant a proprietary right for thirty years to the land held by him, provided that during that period he shall continue to pay the survey assessment. In khoti villages the actual cultivator of each field or sub-division is considered the tenant." Mr. Turquand forwarded this to Government with his letter No. 165, 22nd February 1856. "If

No difference according to survey between various classes of tenants:

this unfair,

the khots can be proved by the general sense of the country and by the civil courts to have proprietary rights beyond their own occupancies, still the survey settlement, as far has it has power, does not acknowledge these rights, for the percentage proposed to be given to the khots is not professed to be an equivalent for *proprietary* claims to be relinquished. On account of the lands, occupied and cultivated not by or for themselves, the khots should perhaps receive, in compensation for their proprietary rights to be relinquished for the general good, a percentage of the gross rent, in assimilation to the provisions for similar proprietors in the North-West Provinces (about 30 per cent.). As regards the lands occupied and cultivated by or for themselves, the khots, like every body else, should reap the benefits of the survey settlement, and no compensation is necessary." Further Mr. Turquand earnestly deprecated Government being brought into the civil court.

Further account of Mr. Turquand's views.

The same views are set forth by Mr. Turquand in his letters to the Revenue Commissioner, Nos. 131, 6th February, and 522, 30th May 1856. He combats Captain Wingate's views (detailed above) that the khots had no proprietary rights as shown by a mortgage bond. He contends that what the khot in that case mortgaged was the proprietary rent, and not the mere revenue. "That the khot is not a mere collector of revenue, but a lease-holding farming proprietor of the land is shown by his having mortgaged not Government revenue, but the rents of the land and all his corresponding interests in the subjects of mortgage other than land, for instance Government delegated manorial rights, &c. His proprietary rights are further proved by his exercise of the various functions of a proprietor, such as ousting tenants, expending capital on the improvement of the land, demanding labour rents, enjoying manorial rights, cultivating land without paying Government revenue, assessing the jack-trees in the kardes' holdings, remitting a portion of the rents in cases of poverty or loss. But they "are *limited and not absolute proprietors.*" Mr. Turquand evidently did not depreciate the rights of some of the cultivators. He wrote: "An Adalat Tribunal would allow a prescriptive hereditary right of occupancy where the occupancy had been for thirty years, or such period as by the practice of the courts is considered a sufficient bar to ouster:* it might perhaps be questioned whether this right of occupancy could be claimed as transferable as well as heritable." He even went farther, and thought that as the khot's rights were limited, created by a contract with Government, Government might, in the exercise of its paramount anthority, forbid the khot to oust *any* tenants. He mentioned the pratice of the Peshwa's Government, which point

Khots limited and not absolute proprietors.

Right of Government to interfere.

* This, as shown above, was the view held by Mr. Coles, Mr. Loughman, and other officers.

was fully discussed in the first part of this enquiry. At any rate, "supposing the courts would not uphold the settlement as regards those tenants whose period of occupancy is less than thirty years, or such term as gives a prescriptive title that would be a bar to ouster, the settlement on the ryotwar plan might be introduced as regards those cultivators, to whom the courts would give a prescriptive right of occupancy, subject to a rent charge." In fact, Mr. Turquand wished to abolish the khoti system, giving to the khots fair compensation, but he maintained that the equitable disposal of existing rights or claims should be made preliminary to creating rights or claims in substitution or supersession thereof: the survey should be introduced with the consent of all the people, or by force of law, *not without both.*

Report of Mr. Reeves on the Ratnagiri Survey.

On 13th September 1856 the Revenue Commissioner submitted an elaborate report (No. 2845) on the Ratnagiri survey. First, Mr. Reeves combated Mr. Turquand's proposal for the settlement of the rights of sub-tenants in dhara estates. This he considered quite unnecessary. Then he gave in detail the views of Mr. Turquand and Captain Wingate regarding the khoti tenure, advocating the opinions of the latter officer. He laid great stress on the fact that "Government exercised the right of conferring inams and giving leases of waste village lands, the necessary deduction or addition being made in the total amount of revenue payable . . . . . These leases were granted direct by the Peshwa's Government or its local authority to the khots as well as to the ryots of khoti villages . . . . . These leases were never granted by the khots. The khot could allow a ryot to cultivate any waste rice, baghayet, or warkas, but he had no authority to exempt land from assessment, when it became necessary to do so, for the purpose of affording an inducement to the expenditure of sufficient labour and capital to recover, or to permanently increase its productive powers . . . . . The khoti watan was limited to the duty of providing for the cultivation of the Government lands actually cultivable at a rate of assessment sanctioned by custom and by specific Government authority." Several instances of such leases are given in an appendix to the report. They all refer to unassessed and unculturable land which required much expense to bring under cultivation. If such leases had not been given by the Paramount Power, then on a general survey of the district such lands would have been liable to the full rate of assessment, and thus both khots and ryots would have been injured. Mr. Reeves also relied on the fact that the khot passed an annual agreement which "may fairly be said to indicate the tenure by which the khot holds the management of a village under his sanad." * The weight to be attached to these kabulayats will be discussed further on in this enquiry. Mr. Reeves, after noting what they contained,

Concurrence of Mr. Reeves with Captain Wingate.

wrote:—"There is no mention whatever made of the amount of revenue payable by individual ryots, or of the rates of land per beega leviable by the khot. All this seems to show that the khot has always been considered, and has considered himself, as a revenue officer or servant of Government, as well as a manager of the land and revenue. That his proprietary right, so far as the land is concerned, extended no further than the management of it. That he has been obliged to agree annually for the revenue in the gross, but that no limit (save that of the custom of the country) has been set to his exactions from the ryots. He has thus been allowed the difference between his own collections and the amount he has paid into the Government treasury . . . . . But it will be asked, if Captain Wingate has correctly described the khoti tenure, what need is there for calling in the aid of legislation in the settlement of the revenue survey? . . . . . The answer is that Regulation XVII. of 1827, Section 3 and Section 8, prevent Government from engaging direct with the ryots . . . . . Government cannot introduce into the annual kabulayat any radical alteration, or anything in fact affecting the legal rights of the khots."

The above reasoning is not in all points quite clear. Section 8 of Regulation XVII. of 1827 is applicable only to superior holders "possessing in some measure a proprietary right to the land."

After referring to Captain Wingate's Draft Bill, and the "malekhana" proposed to be given to the khots, the Revenue Commissioner gave his opinion that the khots were "entitled to very great consideration, and Government should allow them to retain so much of their past privileges as may be consistent with the interests of the rest of the people and of Government." He therefore proposed, in addition to Captain Wingate's settlement, that "the khot should be registered in the Government accounts as superior holder of all Government lands actually in cultivation, those appropriated by purchase, lease, or otner satisfactory mode excepted. The khots would have authority to contract with Government for the survey assessment of the lands, while he would be unable at the same time to levy more than the survey assessment from the ryots . . . . . This settlement is thus a combination of the ryotwar settlement and that of engaging in the gross." The only other point to notice in the report is the question of warkas. Mr. Reeves wrote:—"I am of opinion that the settlement of warkas should be precisely the same as that of rice and baghayet, *i.e.*, Government should, whenever practicable, survey, assess, and settle the holdings of fifty acres on the plan and mode of estimate proposed by Captain Wingate,* but the khot should be required, as heretofore, to engage for the total assessment in the manner proposed by Captain Wingate. This, it will be seen, is a combination of Captain Wingate's and Mr. Turquand's views."

Proposals of Mr. Reeves.

* Query.—Mr. Turquand?

On this report and other correspondence Government Resolution No. 1899, 23rd April 1857, was framed. Government were "satisfied that survey operations on the plan heretofore attempted ought to have been *preceded* by legislation, the existing law being, as is now sufficiently manifest, wholly inadequate for the purpose. Whether legislation may or may not be hereafter required, must depend altogether on the character of the survey settlement which may be dettermined on, but Government are satisfied that the evidence and arguments as yet brought forward are quite insufficient to induce the Legislative Council to entertain a proposition, such as that suggested by Captain Wingate, which requires of them a law, which interferes with the vested rights and established privileges of the holders of alienated lands, notwithstanding that these rights and privileges rest in many instances on sanads granted by former Governments, which have been universally admitted to confer a valid title to hold land wholly or partially exempted from land revenue. Before a revenue survey and settlement of the Ratnagiri Collectorate can be undertaken with any prospect of success, it is absolutely necessary that the rights and privileges of the khots in relation to the Government on the one hand, and to the subordinate occupants of the land on the other, should be fully and completely investigated." The Revenue Commissioner for Alienations was directed to make the necessary enquiry, his attention being drawn to several points. All survey operations in the Ratnagri Collectorate were at once suspended, and by Government Resolution No. 3921, 26th August 1857, the experimental settlement introduced into the three villages of Kolumbé, Bagagashi, and Tiké was annulled. And so the survey commenced by Captain Wingate, framed with the best intentions of ameliorating the condition of the ryots, after thousands of rupees and much labour had been spent, came, like Lieutenant Dowell's survey, to an unsuccessful conclusion.

Resolution of Government on the above report.

The survey suspended.

Here the fourth division of this enquiry naturally ends. But before proceeding to the next division, which commences with the survey operations under Colonel Francis, it may be well to note one or two points which were discussed about this time, but which are not intimately connected with the settlement of the district.

Thus Mr. Scott, the First Assistant Collector, punished two khots of a niwal khoti* village for secreting arms, and wished them to be deprived of the power of passing the annual revenue kabulayats for their village. The question was raised whether Act XI. of 1843 applied to khots. Mr. Turquand wrote a long letter to the Revenue Commissioner, No. 1704, 29th December 1858, in which he insisted upon the difference between the khots of dharekari and

Question of applicability of Act XI. of 1843 to khots.

* That is, in which there is no dhara.

niwal khoti villages. The former were hereditary village officers receiving a "mushaira" for their services. The latter were proprietors, in addition being invested with the charge of the Police. But this did not, in his opinion, prevent the relations between the khot landlords and the cultivator tenants being *equitably* settled, and he advocated legislation similar to the provisions of Act X. of 1859 in Bengal.

Mr. Leighton, in his letter to the Revenue Commissioner, No. 1266, 16th September 1858, objected to the application of Act XI. of 1843, "as virtually an admission on the part of Government that khots are watandars possessing hereditary rights." It is hard to understand what objection there could be to admitting that mirasi sanadi watandar khots have hereditary rights.

Questions were also raised with regard to the rights of khoti co-sharers, and Mr. Turquand wrote a letter to the Revenue Commissioner, No. 836, 10th October 1859, in which he recapitulated the views as shown above. He wished the khoti tenure to be compared with the tenures in the North-West Provinces, maintaining that niwal khoti villages were zemindari, not talukdari. He held that even the cultivators who might be antecedent to the khot had only a right of occupancy at the customary rates, which was heritable but not transferable by gift and sale (as the khot's rights were). "I would uphold the *bonâ fide* proprietary rights of the khots, and adopt every legitimate and necessary measure to benefit the cultivators, and ensure them due protection and security: make the hereditary cultivators proprietors by applying the principle of the Irish Act for converting leases for lives renewable for ever into fee simple."

Comparison of Khots with Zemindars.

Government called for reports on the saleable value of land, and Mr. Turquand wrote a letter to the Revenue Commissioner, No. 1668, 16th December 1858, in which his views as to khoti tenure are detailed at great length. But enough extracts have been made from that officer's letters to show what were his opinions as to the relations between Government and the khot, and the khot and his ryots.

PART V., 1858—1873.

The fifth division of the enquiry begins with Government letter to the Revenue Commissioner, No. 1892, 19th May 1859, in which it was stated that "it is the intention of his Lordship in Council

Fresh survey commenced.

o recommence the survey in Ratnagiri in the course of the ensuing season, and to entrust it to Captain Francis, under whose control there is every prospect of its being brought to a successful issue."

First Report of Col. Francies on the khoti system.

On 23rd September 1859 Colonel (then Captain) Francis addressed to Government his letter No. 466, reporting upon the khoti system, and the form of settlement he proposed for villages held on that tenure in Sanksi and the other southern districts of the Tanna Collectorate. Paragraph 3—"The khots of these districts assert that their tenure dates from the same period as the tenure in the Ratnagiri Zilla, and I am inclined to think that their statement in this respect is correct." Paragraph 4—"The origin and peculiar character of the tenure in Ratnagiri is the counterpart of the system obtaining in these districts." A consideration, therefore, of Colonel Francis's proposals will be instructive in this enquiry, which is concerned with the watandar khots of the Ratnagiri District; but it must be remembered that all the earlier authorities held that the khots south of the Bankot River possessed greater rights and privileges than the khots who were found to the north of the Sawitri. Colonel Francis proceeded to quote extracts from Captain Wingate's report showing the views of Messrs. Chaplin, Dunlop, &c. on the status of the khots and the ardheli ryots. (These have all been given above.) With regard to Lieutenant Dowell's opinions as to the rights of the kardes, Colonel Francis wrote (paragraph 8)—"What is stated above appears, however, to be applicable to particular cases more than to the general body of the cultivators, for Lieutenant Dowell himself remarks that 'the rights of the kardes are not the same in all villages,' and *I may add that, in the course of my enquiries in the Tanna Districts, I have not met with any case of ryots enjoying the rights Lieutenant Dowell assigns to them in some parts of Ratnagiri.* There is no doubt the khots were very powerful during the latter years of the Maratha Government. They held their villages at a certain fixed sum, and managed them as they pleased, and so long as the sum agreed upon was paid, the Government seems to have made little enquiry as to the manner in which it was realized. Somewhat the same system prevailed under our administration for some time. Government, however, of late years have been endeavouring to restrain the khot's power, and protect the ryot from exorbitant demands. Restrictive clauses having this object in view have from time to time been added to the khot's annual agreement, and no doubt some degree of protection has been afforded the ryots by these measures, but Government have never attempted to fix by the lease the terms on which the cultivators should hold their lands under the khot. Excepting cases where written agreements exist, I have nowhere found cultivators, other than dharekaris, holding land at fixed rates under the

Origin of the tenure.

Rights of the tenants.

Interference of Government.

khot. The latter seems, in fact, to have almost as much power in disposing of the occupancy of the land at this present as he was represented to have by Mr. Chaplin in 1820-21." Colonel Francis then described how the khots had lately been ejecting all their ryots, "so that no record of their being in occupation should appear in the survey papers"—(Mr. Crawford, the 2nd Assistant Collector of Ratnagiri, complained in 1860 of the same thing, and asked the Collector, Mr. Tucker, to issue a proclamation forbidding such a course of proceeding, but Mr. Tucker declined to issue a proclamation to which he could give no effect)—and painted in strong terms the defects of the khoti system by showing the way in which the khots oppressed the ryots. He wrote (paragraph 13)—

Reasons for rejecting Capt. Wingate's plan of Settlement.

"In the plan of settlement for the khoti villages of Ratnagiri, submitted by Captain Wingate, it is proposed that the ryots' release from their present state of thraldom should be effected by making them hereditary proprietors of their holdings, whilst the khot is to be compensated for the loss of his privileges by a percentage payment on the revenues of the village. Five or six years have elapsed since this plan of settlement was first propounded. It might probably have been carried out with some success at that time, but, considering the present state of public opinion on land tenures in general, and the terms of the Queen's proclamation on the transfer of the Government of India to the Crown, I think it will be generally admitted that it is neither advisable nor expedient to introduce such a plan of settlement at the present time; indeed, it may be doubted whether Major Wingate would now take the same view of the question. In the first place it is questionable whether the Legislative Council would pass an enactment which would transfer the proprietary right of land from the khot to the ryot; at the same time it is very clearly shown in the late Revenue Commissioner's report on the khoti question, that Captain Wingate's plan of settlement cannot be introduced without the aid of a legislative enactment, the repeal of the present Regulations, by which the right of engaging for the land is vested in the khot, being absolutely necessary." A quotation is then made from Mr. Reeves's report No. 2845, 13th September 1856 (mentioned before), showing that, in the opinion of that Officer, Regulation XVII. of 1827, Sections III., VIII., prevented Government from making a ryotwar settlement.

Colonel Francis proceeded—"Supposing the present enactment to be obtained, it is a question for the consideration of Government, whether it would be expedient or consistent with good policy to adopt such a plan of depriving the khots of their present status, and their proprietary or quasi-proprietary rights to their holdings, for, though such right has not been formally conceded, it has been

obtained by prescription.* It is true that it is proposed to compensate them for the loss of these privileges, but the percentage (the amount named as compensation) would be considered a very inadequate remuneration: no reasonable amount would be thought sufficient compensation for the loss of what they look upon as watandari rights. There is another point of view in which this question should be considered; supposing the enactment to be passed, and the contemplated form of settlement introduced, have the ryots the power or the means of maintaining their new position of hereditary proprietors? I fear this question must be answered in the negative. I have already shown how dependent they are upon the khot; they look to him for the cattle and the plough even in some cases required for the tillage of their fields, and he invariably supplies them with the grain required for seed. He is generally the soucar as well as the khot of the village, and none of these requisites for the tillage would, of course, be given under a new state of things, without the land being hypothecated. It is not difficult, then, to foresee that, under such an arrangement, the land would soon pass back again into the hands of the khot, not as the superior holder, but as the occupier under Government, entitled also to the percentage payment awarded as compensation for the loss of privileges, of which he had been dispossessed by the enactment. The ryots under such a state of things would be in a more servile condition than they now are. The khoti system seems to have become the normal state of things in these districts, and I fear it would be found as difficult to raise the ryots, as it would be to dispossess the latter of their proprietary rights. . . . . I feel impressed with the conviction that the only form of settlement that can be successfully carried out must be based upon an agreement made with the khot as superior holder. I would propose, therefore, to continue the present plan of agreeing with him for the revenues of the village in the gross, but would afford protection to the ryots *by giving them a right of occupancy, by depriving the khot of the power of ejecting his tenants, except by order obtained on petition to the Collector*, and, as a further method of protection, would make the granting a receipt compulsory, and the withholding it a punishable offence."

Dependence of the ryots on the khots.

Settlement proposed by Colonel Francis.

Colonel Francis, therefore, proposed that the provisions of (Bengal) Act X. of 1859 should, "with some few modifications, be made applicable to villages held upon the khoti tenure," but that *all* ryots (not merely those who had held possession of their fields for twelve years) should be given an occupancy right in the lands of which they were in possession at the introduction of the

* In the case of the khots north of the Bankot River, but is this true of watandar khots?

settlement, not at the survey rates, but upon the terms agreed upon with the khot. "This, however, will not apply to the khots' private dhara or suti, or to lands sublet by a ryot having a right of occupancy, or to dharekaris. Three forms of tenure will exist—

Three forms of tenure.

(1.) Dharekari—entirely independent of the khot, but paying the Government assessment through him.

(2.) Ryot, not holding at fixed rates, but having a right of occupancy in his land on the terms agreed upon with the khot.

(3.) Ryots, not holding at fixed rates, or having any right of occupancy, being entirely dependent on the khot for the possession of their lands, and for the terms of rent.

Rent paid by ryots when liable to enhancement.

Ryots having the right of occupancy should not be liable to any enhancement of the rent previously paid, except on the following grounds, *i.e.* :—

(*a.*) that the rent paid by them is below that prevailing in adjacent places for land of a similar description, and with similar advantages.

(*b.*) that the value of the land has increased independently of the ryot.

(*c.*) that the quantity of land held by the ryot is greater than he has paid rent for."

Another essential principle of the proposed settlement was the removal from the Civil Court to the jurisdiction of the Collector of all suits regarding rent and land between the ryots and the khot.

"The adoption of the proposed form of settlement would assimilate the khoti tenure to the zemindari system of the North-West Provinces. There would, however, be an important difference in the two systems in a financial point of view, in that, whereas a reduction of 10 or 15 per cent. on the estimated assessment is allowed the zemindar, it would not be necessary to allow the khots any such margin of profit. . . . . They will be fully compensated for any loss of power by being made proprietors of their estates."

As noted before, it is hard to understand how making a man proprietor of what he is already proprietor of can be considered "compensation."

The point especially to call attention to in the above plan is, that *all* ryots were to have occupancy rights given them, but not at survey rates.

Modifications in the above plan.

In his letter to the Sub-Collector of Colaba, No. 119, 20th March 1860, Colonel Francis introduced some modifications. He and Mr. Scott proposed "that the khots should be continued in

possession as superior holders, and as such should hold their villages in lease for thirty years at the survey rates, subject to the following conditions (regarding dharekaris omitted):—

"That the khots should give the occupiers of khot-nisbat lands (all lands not held by dharekaris), rice and warkas, a lease of their present holdings for the full period of their own lease at rates not exceeding one-half in excess of the survey assessment. That the right of occupancy (of the ryots) on these conditions should be considered hereditary. That these conditions should be embodied in a lease which the khots should be required to sign." Thus a limit was to be fixed to the khot's demand from all his tenants. Rent paid by ryots to be fixed.

"An increase of about 50 per cent. upon the survey assessment appears at first sight to be a heavy rent. But if we calculate what the cultivators' payments will amount to under this arrangement, it will be seen that it falls considerably short of the khot's present demand, which for rice land is generally half the produce. Now, as the rates of the survey settlement are estimated at a fifth of the same, the ryot's payment of half as much again as the sum fixed will be equivalent to three-tenths, or somewhat less than a third of the gross produce: should the survey assessment, however, amount to a fourth, the ryots' payment will still be only a little more than a third of the gross produce, and supposing the rate to be fixed as high as one-third of the gross produce, his payment in that case will amount to exactly one-half of the same, which is less than he actually pays at present, for the khot also takes 'Phuski,' 'Pendeh' &c. . . . . With regard to the khots, they have been dealt with very liberally, as 50 per cent. is a large margin of profit;* and although in many cases they may have been able to realize more than this, their levies have not been backed with the sanction of Government: under the proposed plan, however, the right to the margin of profit allowed is to be recognised and upheld in case of dispute; they will, therefore, be placed in a more secure position with regard to their rents than they have hitherto occupied. Their right to hold the village is also recognised. The concession of this point in their favour is a very important consideration. For the advantages thus gained they have to concede to the cultivators a right of occupancy on the terms above explained, but what they lose in this way is compensated for by the advantages gained, as above explained."

The Government Resolution on these reports was No. 1832, 18th May 1860, confirming the settlement proposed by Colonel Francis. It was and professed to be a most important Resolution, for (paragraph 1) "any settlement which may now be sanctioned must in a manner regulate future proceedings in regard both to the remaining talukas of the Sub-Collectorate (Colaba), and the greater part of the Collectorate of Ratnagiri." Resolution of Government on the above: its importance.

* It was said above to "fall far short of the khot's present demand."

"3. The actual position of the khots must be taken as the basis of future treatment, and in endeavouring to reform the present system it is the desire of Government to maintain all existing rights, so far as may be compatible with justice and with a sound scheme of revenue management, and to adopt rather than overthrow institutions, which, whatever their origin, have become so firmly rooted in these districts that their sudden eradication, supposing it to be possible, would amount to a social revolution.

"4. Some uncertainty prevails in regard to the present system, the relations between the superior holder and his sub-tenants being the point on which there is the greatest difference of opinion. It seems, however, to be established beyond question—

"1*stly*.—That Government has a right, on occasion of a general survey, to revise and alter the revenue payable by the khot.

"2*ndly*.—That the khot has the right of settling with Government in the gross, and of deriving a profit by sub-letting the land to others.

"3*rdly*.—That the ryot has a right to protection from over-exaction on the part of the khot.

"6. . . . . His (the khot's) right of sub-letting the land is neither more nor less than the right of receiving the balance of rent which remains after satisfying the Government dues. This also will be confirmed, but as this right is undoubtedly derived from the State, it will remain with Government to prescribe how far, with due regard to the general interests of the community, it should be exercised without control.

"7. The discussion of the question involves a decision on the third point above noted—the right of the ryot to protection from over-exaction. The difficulty is to determine the degree or extent to which this protection should be awarded.

"8. The basis of the settlement lately attempted in Ratnagiri, was the recognition of a right of occupancy on the part of the ryot, and his title to deal with Government direct for the assessment of his land, the khot being regarded as an agent only. To this settlement, inasmuch as it involved a surrender of some privileges highly prized by them, it is scarcely possible to obtain the consent of the khots.

"9. The opposite opinion on this much debated topic would admit the khot to the unlimited proprietorship of the village for the revenue of which he engages (a position he never yet enjoyed), and would abandon to his mercy, as mere tenants-at-will, all ryots, whatever their claims to consideration from long and unquestioned occupancy.

"10. The adoption of these views would place the ryot in a far worse position than he now holds, and there can be no hesitation in rejecting such a basis of settlement. Even under the zemindari system of Bengal, legislation (Act X. of 1859) has recently provided for the protection of the ryot, and restricted the power of the zemindar to eject him.

"11. The settlement now proposed appears to His Excellency in Council to avoid both extremes . . . . . The proposals before Government are based upon the principle of maintaining the relations now existing between the superior holder and the sub-tenant, and modifying the present system only so far as change is obviously and urgently called for. . . . . .

"12. According to this settlement, khoti villages will be given to the khot at the survey rates on a lease for thirty years, and the khot will in turn give leases for the same period to the *permanent* occupants of khoti lands, a maximum assessment being fixed beyond which the khot will not be permitted to tax the sub-tenant."

"15. The lease (from the khot to the sub-tenant) should secure the right of heirs of the lessee."

With regard to the ryot's right of transfer,—

"Paragraph 17.—In disposing of this question the following circumstances, under which transfer may be desired, present themselves for consideration. The land may be held by a mere tenant-at-will—it may be held by one who is entitled to the right of occupancy. The land may have been improved by the capital of the occupant, or it may have been improved by the capital of the khot himself.

"18. In the first case, of course, there can be no transfer of any kind without the consent of the khot. In the second, transfer by sale or gift should, the Honourable the Governor considers, be permitted on payment of a fee or nazarana of a given amount to the khot, whose signature should be attached to the deed of sale in token of validity. In the third case, in order to secure the ryot the value of improvements which he may make at his own expense, it should be stipulated that when a ryot wishes to transfer land so improved, the khot, if he refuse consent, shall be bound to pay the ryot the full value of the permanent improvements as assessed by a Panchayat. In the fourth case the right of the khot to either accord or withhold his consent to the sale should be distinctly acknowledged. If, however, his consent be given, the fee or nazarana should be paid as above." The Resolution approved of the limit proposed by Colonel Francis, and ran (Section 25)—"It will be the duty of the officers making the settlement to see the

prescribed limit is not exceeded in any of the agreements which the khots may bring for registry and confirmation at the jamabandy."

(Government Resolution No. 4124, 20th October 1864, afterwards ruled that "if there be an agreement of long standing between the khot and the ryot, even though in excess of the limit fixed by the settlement, it should be admitted by the Superintendent of Survey on special grounds being adduced for its admission.")

Two points to be noticed in the above Resolution.

The first important point to notice in this Resolution is, that the khot was to give leases to his *permanent* tenants. In discussing the right of transfer to be given to the ryots, mention is made of "tenants-at-will," but as in that case it was said that there could be no transfer without the consent of the khot, it may be supposed that leases were not to be given to this description of tenants.

The next important point in the above Resolution is the statement that, as the khot's right to receive rents from his tenants is derived from the State, it remains with Government to control that right. It should be noticed, however, that Colonel Francis wrote, that Government had *never* attempted to fix by the lease the terms on which the cultivators should hold their lands under the khot. It can hardly be denied that the State, as the paramount landlord, may direct the khot to pay the revenue in certain instalments, may demand security for payment of the revenue, may order the khot to give receipts to his cultivators, may, perhaps, fix what is the customary rent of the country, may direct the khot to give written leases to the watandar ryots; but it seems to be generally admitted that, in order to compel a khot not to eject, or to demand a limited rent from his tenant, a legislative enactment is necessary.

Report of Col. Francis on the Nagotna Peta.

On the 26th April 1861 Colonel Francis submitted a report, No. 218, upon the introduction of the survey settlement into the khoti villages of Nagotna Peta, Taluka Sanksi, according to the plan sanctioned in the preceding Government Resolution (No. 1832). There were only one or two points on which the terms of the settlement were modified. It was arranged that all ryots' payments under the settlement should be calculated according to the maximum allowed, *i.e.*, 50 per cent. increase upon the survey assessment. "But (paragraph 5) judging from the result in this case, I am of opinion that a rate fixed upon the above-mentioned plan will be too high for general adoption in future settlements. It would affect a reduction, no doubt, in ryots' payments in villages where the khot has been more than ordinarily exacting in his levies of rent, but in cases where he has been reasonably fair, or where the land has been held at makta rates, the ryot's payments will be generally increased if we allow the khot a profit of 50 per cent. on

The rate of the khots' profits reduced.

the survey assessment. I am further of opinion that in fixing the amount to be allowed as his profit, two rates are required, *as there are at least two distinct kinds of tenure upon which lands are now held in khoti villages.*

"6. There is, first, the ardhel or tirdhel tenure, which imports a payment of half or a third of the gross produce in kind; and the makta system, under which the rent is generally fixed, being a certain quantity of grain, or a specified money payment. The holder of the land under the former system is ordinarily a mere *tenant-at-will*, whereas there are numerous cases where the ryot has been in possession of the same land at a fixed rate under the latter system for a lengthened period, so long in some cases as to constitute a right of occupancy which would be recognised in our civil courts. The makta-paying ryot also holds his lands, as a general rule, on more favourable terms than the ardhel-paying man. He is entitled, therefore, by this custom of the country, as also on account of his long-continued occupancy, to more favourable terms under our settlement than the mere tenant-at-will. I propose, therefore, to have two rates for fixing the khots' profits in future settlements, *i.e.*, a rate of one-third or 33 per cent. increase on the survey assessment for all lands heretofore let upon the ardhel and tirdhel tenure, and a rate of one-fourth or 25 per cent. increase for those held on makta, or otherwise than upon the above-mentioned tenure."

Two kinds of tenure; ardheli, tenant-at-will, and maktekari, permanent tenant.

That there are in many khoti villages "two distinct kinds of tenure" has been amply demonstrated in the preceding pages of this enquiry. But that they are distinguished by the two descriptions of rent, thal or makta, has not been shown. Mr. Pelly, in his report No. 537, 18th December 1820 (quoted before), stated that "the ardheli ryot who may cultivate rice land generally pays his landlord half produce in kind, adjusted either by agreement," (this is makta or khand), "or actual admeasurement at the period of harvest," (this is thal or ardhel). And Lieutenant Dowell wrote in his report of 1st November 1829 (quoted at page 12 of Captain Wingate's printed report):—"The contract of the karde is sometimes for the field itself without reference to the crop; this is usual for the grain cultivated in the small gardens of the watandars, the payment being permanent in money. The Mahomedans from the coast rent small fields in this way to cultivate hemp for their nets, and the Brahman kardes, who till rice and level warkas land, sometimes agree for the quantity of grain to be paid before ploughing. This last they call the settlement by khand, the money payment makta, and the usual harvest inspection thal." As a matter of fact the money payments are to be found chiefly in the Ratnagiri Taluka,

This distinction discussed.

where they are always called makta, and this accounts for the definition given by Lieutenant Dowell who was writing of that taluka; but in the other parts of the district makta signifies rent either in cash or kind, settled without reference to the harvest inspection, the word khand being used for the same kind of payment, but more particularly in the southern districts. It very often happens that the maktekaris and khandkaris are watandars, but this apparently does not follow as a matter of course. At page 477 of Volume IX. of Sadr Diwani Adalat Cases there is a Malwan (southern taluka) case reported in which the Collector wrote:—"The practice of taking fixed rents (khand) from the tenants being advantageous to the tenants should be encouraged." It thus seems to have been a matter purely at the pleasure of the khot.

However this may be, it is clear that it was intended by the proposed settlement to compel the khot to give a lease for thirty years at fixed rents to some cultivators who were his tenants-at-will. It has already been shown that the idea, that our civil courts recognise a lengthened period of possession as by itself constituting a right of occupancy, is mistaken.

Draft Act prepared by Col. Francis.

With his report Colonel Francis forwarded a Draft Act, embodying all the provisions of the settlement above detailed. It also provided (Section III.) for the procedure in case of a village being attached by Government, owing to the khot's refusal to accept the settlement. Colonel Francis proposed that the khot's interest in the village should be sold by public auction, and the proceeds paid to him. Sections XVI. and XVII. were said by Colonel Francis to be an exact copy of the Government instructions relating to the ryot's rights of transfer. But there was this difference, that, while the Resolution supposed four cases, the Draft Act supposed three only, merging the first and second (that is, "the land may be held by a mere tenant-at-will, it may be held by one who is entitled to the right of occupancy,") into the case of "an ordinary sub-tenant." It is thus impossible from the words of the section to tell whether it was intended to make the enactment applicable to mere tenants-at-will.

Resolution of Government on the above.

On Colonel Francis's three reports above described, and the Resolution No. 1832, and Captain Wingate's Draft Act, Government passed their Resolution No. 3765, 24th August 1861. It was determined for the present not to pass a legislative enactment, as "Government have not a doubt that the survey operations may be carried on under the existing law, whether the holders of land under their direct dominion are khots or khakrobs, ryots or zemindars."

"9. Our khots have *a hereditary right to realize the revenue and manage the lands of their villages* upon which they pay the land tax to Government; consequently, in accordance with the definition laid down in Section III. (Regulation XVII. of 1827), the khot is of that class of our agricultural subjects who is and ought to be looked upon as the occupant with whom the Government are called upon to make the settlement. Khots are "occupants."

"10. Of course it rests with the Government to make periodical surveys of the villages, and revise the terms on which the khots are permitted to collect the revenues and manage the lands, and pay the Government land tax; for the *practice which has existed since the commencement of the British rule* has been to require the khots to pass annually an agreement for the management of their villages, failing to do which they lose it. The effects of this right upon the part of Government are to leave the khots dependent upon their moderation and liberality, and the results which might follow from it are described to be such by Mr. Chaplin, the Commissioner of the Deccan, in his letter relating to the internal management of the Southern Konkan, dated 21st November 1821, that Government in raising the khots' rents might perhaps do so to such a pitch as to absorb all their profits, and render the farm no longer worth the holding. Right of Government to revise the terms on which khots hold their villages.

"11. Such being the relations between the Government and its khot, the former do not require to have recourse to legislation to carry out, according to their discretion, a settlement which shall ensure due protection to all parties." Legislation not needed.

This is a most important Resolution; for as every Government officer and every Government Resolution had heretofore shown the necessity of legislation before carrying out a settlement which should ensure due protection to all parties, Government now considered that legislation was unnecessary. It is clear, then, that some new and important consideration must have been brought to light. What that was, is evident. It was that as the khots passed annual agreements, therefore Government could revise the terms on which the khots are permitted to collect the revenues, and manage the lands, and pay the Government land tax.

The history of these annual agreements, as gleaned from the records of the Ratnagiri Collectorate, is shortly this— History of the annual agreements passed by the khots.

In 1818-19 (when the whole district came under British rule), the custom was established of the khot of each village signing an agreement every year to pay such and such revenue, (whatever may have been fixed as the total demand on the village for that year). This agreement was endorsed by the "zamin," who recited his willingness to be security that such and such revenue should be duly paid. Nothing else was written in the document.

The object in view clearly was that the Collector might know if the khot accepted the management of his village. If the khot thought that it would be a loss to him to take up the khoti, he would decline to sign the agreement, and then the Collector would take the village under Government management.

In 1825 the custom was introduced of dividing these agreements into five clauses. These were shortly—

(1.) I will pay such and such revenue (like the old agreement).

(2.) I will pay according to custom the other cesses, besides the fixed revenue.

(3.) I will manage the village according to custom; I will not exercise oppression: if any complaint is made, I will attend when called, and obey any order that is given.

(4.) I will pay all the instalments from 15th November to 15th June without giving any excuse.

(5.) I will not give any excuse if any dharekaris or ardhelis die, or leave the village, or become too poor to till their fields, but I will keep the fields fit for cultivation, and pay the revenue.

Then followed the endorsement of the "zamin" as before.

In 1829-30 another clause was added relating to the joint responsibility of co-sharers.

From 1831-32 it seems that numerous clauses were introduced one year, and then omitted in following years. These are all unimportant, relating to such matters as "nakt bábichi páhani," payments to inamdars and hakdars, &c.

In 1840-41 a clause was introduced to the effect that if grants of "*kauls*" were made, the additional assessment should be paid.

In 1848-49 additional sections were introduced to the effect that the khot would duly enter in the cultivators' receipt-books the rents received from them, and if the cultivators did not produce their books, would give them receipts on separate slips of paper; would take copies of all orders passed regarding the management of the village, and would give copies to the next manager; would attend when ordered by the Collector.

In 1858-59 there was another section regarding the entry of receipts of "grám kharch."

A separate agreement was not taken from each khot or body of khots, but one was drawn up for a whole division of the district, and then the khots signed against their respective villages.

The following is in a brief form a specimen of the annual agreement as existing just before the introduction of the Revenue Survey :— Form of the agreement.

To the Collector of Ratnagiri.

Agreement of khot of . I have agreed to the management of the whole khoti of the said village for the current year. The following are the clauses for the recovery of the revenue :—

1. According to the annual custom I have agreed to the full jamabandy, cash and grain. I will pay the eight instalments, each before the 20th day of each month, between November and June.

Then follow details as to the grain assessment and its valuation.

2. If the assessment under each head (ism) is more than that of last year by leases, or by any order of the Government, I will pay the full assessment according to the first clause.
3. Items which are not entered in the jamabandy accounts I will duly pay, and allow no complaint to arise.
4. I will manage the village as in past years without extortion, and will give no cause for complaint; should, however, any arise, I will pay any amount of fine up to Rs. 100, as Government may direct.
5. Without making any demur on account of injury by fire, flood, &c., I will pay all the assessment as laid down in Clause 1.
6. Should any tenants die, or leave the village, or become too poor to till their fields, I will, without any complaint, pay the whole assessment, and keep the lands fit for cultivation.
7. Relates to payments to Inamdars.
8. The agreement is in my name, but should any of my agents commit fraud as regards receipts, I will be responsible.
9. I will duly enter in the cultivators' receipt-books the rents received from them, &c. (according to the clause introduced in 1848-49, shown above). In default I will pay a fine up to Rs. 100, as Government may direct.
10. I will manage the village according to such orders as have been or may be given, and will take and give copies (as above).

11. These and additional sections related to the joint responsibility of co-sharers.

12. Whenever Government may summon me, I will attend, and will give no excuse. Should I fail to attend when summoned, I will pay a fine up to Rs. 50.

13. Relates to grám kharch.

14. Relates to trees.

It is thus clear that a khot does not hold his village on the strength of his kabulayat. His title deed is of course his *sanad*. The *kabulayat* is merely his security for payment of the Government assessment, and that he will manage the village according to the principles of sound revenue administration, as laid down by the Collector, representing the State or Paramount Landlord. It is evident that several Revenue Officers in this district have been convinced that the khoti system is essentially bad, and they have endeavoured to restrain the power of the khots by the addition of various clauses in the kabulayats; but, as Colonel Francis remarked, they had never attempted to fix by the lease the terms on which the cultivators should hold their lands under the khot. In Tazubai's case (Bombay High Court Reports, Volume III., page 138), the Joint Judge wrote—"The Court does not look on the practice of the khot having to pass a yearly kabulayat as a disparagement of his proprietary claim. The necessity of his giving renewed security supplies a sufficient reason for the practice. The kabulayat, moreover, marks the privilege of the khot to settle directly with Government; and the technical form assumed by his demand for reinstatement, is the assertion of his right to pass these kabulayats." And in *Rawji Narayan Mandlik* v. *the Collector of Ratnagiri*, the Assistant Judge (Mr. Lyon), using the words of Lord Lyndhurst in *Freeman* v. *Fairlie*, with reference to a "pottah" in the Bengal Presidency, spoke of a "kabulayat" as being nothing more than a fiscal regulation introduced for the purpose of collecting the tribute to which the land is subject.

Merely a security for payment of the Government revenue.

The right of Government to make periodical surveys has never been denied. If Government can at the time of the survey *revise* the terms on which the khots manage the lands of their villages, then the khot must be simply a farmer whose farm comes to an end when a new survey is made, and with whom a *fresh* contract may be made by Government, if Government so choose. If this be true, then a mirasi khot, a sanadi khot, a watandar khot is in a worse position than a mirasdar or gatkuli ryot.

Report of Mr. Chaplin quoted in the above Resolution.

The report of Mr. Chaplin, to which reference was made in the Government Resolution, was quoted in the earlier divisions of this enquiry. After showing that "the Mamledars' accounts afford no means whatever of judging what was actually levied by the

khot from the ryots, although they would, of course, show what was received by Government from the khot;" that, whatever the amount of the assessment may be, the khot alone is answerable to Government for it; that "on a new pahani increased cultivation is detected and assessed, and perhaps improved land may be brought into a higher class, and consequently bear a higher rate of assessment by a new classification, but the rates of each class of land are said to remain fixed;" that "Government does not know what the ryots actually pay, nor whether the khot may gain or lose by his farm;" that "the power of Government to raise the rent by a fresh survey as the quantity of cultivation increases, and even of enhancing the rate of improved land by a new classification, although this latter power is said to be but rarely exercised, must be a serious drawback to the spirit of improvement on the part of the khot;" that, though "the direct consequence of the khotwar system would seem to be to keep the ryot in the lowest stage of poverty," yet "the khots are said to treat their ryots with kindness, and to be generally popular with them," and "it is doubtful how far it may be just or politic to interfere with the khotwar system now;" the letter concludes—

Power of Government to resume khoti farms.

"The only way, perhaps, in which the khots could be dispossessed of their farms would be to purchase them by a fixed annual allowance, equal to their average profits, and to confine their functions in future to those of an agent of Government (as a Patell). But, as the farms are liable to enhancement whenever Government sees fit to raise the rents by a new pahani, it would be necessary, in the first instance, to make a new survey assessment of the lands, and having ascertained the probable profit of the khot at the new rate to fix his salary accordingly. It may be questioned, however, whether Government has a right directly to resume the farm, at any rate, without the assent of the khot, although as the cultivation improves it can unquestionably raise the rent, and perhaps to such a pitch as to absorb all his profits, and to render the farm no longer worth the holding." In other words, Government, the Paramount Landlord, *may rack-rent its tenants*. The question of the *policy*, or even of the *power*, of such a proceeding is beyond all argument.

Comparison of the Talukdars' leases in Guzerat.

Before leaving this subject of leases it is interesting to refer to the history of the leases which used to be granted to the Talukdars in Guzerat. Mr. Peile in his "Account of the Talukdars in Ahmedabad Zillah" (being No. CVI., New Series of the Selections from the Records of the Bombay Government), shows how the Talukdars had unquestionably a proprietary right in their estates. But "in the year 1821 the Honourable Mr. Elphinstone, regretting the heavy burden which had been laid upon the Rajputs or Taluk-

dars, sought, by fixing for periods of five or seven years the amount of their tribute or land-tax, to amend their condition, the object being to give them a prospective assurance that, during that period at least, the tax should not be increased upon them. It had long been the practice to take from the Talukdars yearly agreements to pay the tax placed upon them. The above assurance was henceforth embodied in these agreements, and gave them that illusive resemblance to a lease which either misled subsequent Collectors, or tempted them to add clause after clause, the effect of which has been to annihilate the Talukdars' ancient proprietary rights, and convert them into mere lease-holders." And so here: though the khots may not have had as full proprietary rights as the Talukdars, yet it is clear that a "watandar khot" must have had in a measure some proprietary right; and though it has long been the practice to take from the khots yearly agreements to pay the Government revenue, and though several clauses have been added to these agreements by subsequent Collectors, yet not one of them has had the effect of annihilating the khots' proprietary rights. The Bombay Government passed Act VI. of 1862 in order to restore to the Talukdars their proprietary rights. There is no need to restore to the khots what they have never lost.

The only other point to notice in the Resolution No. 3765, is that Government considered that the question, whether the khot's profit should be estimated at 50, 33, or 25 per cent. of the survey assessment, was a point which need not be entered upon as yet, and "should be determined hereafter by the Settlement Officer at the time of settlement for each village according to the result of careful inquiries into the rates of past payment which have been in force, and the profits realized by the khot."

The survey settlement was first introduced into the Ratnagiri Collectorate in 1866. But it will be necessary, first, to notice the effect of Bombay Act I. of 1865, which in the opinion of Survey Officers is the authority for their present proceedings, and to refer to the well-known case of Tazubai *v.* The Sub-Collector of Colaba, which was tried by the Assistant Judge of the Konkan at Tanna in 1862, the special appeal being decided by the High Court in 1866.

Tazubai's case.

It should be especially noted that the decision in Tazubai's case applies solely to the khots north of the Bankot River. The words watani, mirasi, sanadi khot are not once mentioned in the judgments of the Joint Judge and of the High Court. Indeed Mr. Justice Newton said—"No lease or title deed of any kind is relied on." Practically, therefore, the case is of no use in this enquiry.

One or two points, however, deserve notice. The reference to the extracts from the Peshwa's daftar, which were recorded in

appeal, is valueless, as they clearly did not refer to *watandar* khots. This point was disposed of in the first division of this enquiry.

Question of the khots' proprietary right in the soil : not absolute,

The point, on account of which reference is always made to Tazubai's case, is thus expressed:—"*The khot has no proprietary right in the soil in his village, but an hereditary right to farm the revenue.*" The inapplicability of this to watandar khots is easily demonstrated. That even a sanadi khot is not the *absolute proprietor* of the soil is clear. "Unless a sanad contains words expressly granting the ownership of the soil, it must be held that the ownership of the soil was not granted" (Bombay High Court Reports, Volume VI., page 199). Now it may well be doubted whether any khoti sanad can be found in which the ownership of the soil is expressly granted to the khot. They all run something like this—"You are, therefore, to enjoy from generation to generation the khoti watan of the aforesaid village, and the 'manpan' connected with it, to promote cultivation, to pay the Government revenue according to the practice of the country, and to live happily." Several arguments have already been noticed showing that it is impossible for a khot to have absolute proprietorship, and innumerable quotations might be made from old records in support of the arguments. But the point is almost self-evident.* The question, then, is—Has, therefore, a khot *no* proprietary right in the soil of his village? Innumerable extracts might also be made from the old records to show that the watandar khots have *some* proprietary right in the soil, and very many of these extracts have been given. It will suffice to call attention to two convincing reasons for holding this view—

but in a measure.

(1.) The fact has always, more or less, been admitted by Government. At first, as shown by Captain Wingate, the khots were considered by Government to be proprietors of their villages; and though these views were subsequently modified, Government never (except in the Resolution No. 1937, 31st March 1853,) declared that a khot had no proprietary interest in the soil, while there are numerous Resolutions declaring the contrary. And the Resolution No. 1937, which seems to assent to the argument of Captain Wingate and Mr. Coles, (an argument founded on a mistaken view of a mortgage bond,) was itself founded on a mistaken idea as to the opinions of former officers.

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* For some instructive remarks on "absolute proprietorship" see Maine's Village Communities, page 157. Compare also introduction to Lyon's Guide to the Law of India, page 4, and the authorities there quoted, Austin's Jurisprudence, page 817, and Maine's Ancient Law, page 273.

As late as 1864, Mr. Ellis in the debates in the Legislative Council said—"It seemed to him to be beyond doubt that the khot has an interest, (though not an unqualified one,) in the lands of his village," and again—"That the khot had an interest of a very high order in the soil was a fact, to ignore which was to commit a manifest injustice."

(2.) It is clear that a khot is an "occupant" according to Section 3 of Regulation XVII. of 1827, and Government in their Resolution No. 3765 (quoted above) admitted this fact. It is shown also that his rights were identical with those of other "occupants." He was never ejected from his occupancy so long as he paid the Government revenue, which was liable to be raised at the time of any general survey. In many documents he was styled a *mirasi* khot, and he exercised all the rights of a mirasdar. If, then, a khot has no proprietary rights in the soil, neither can a mirasdar have any, which is absurd.

The rights of khots as "occupants."

But if a khot is an "occupant," then it must follow that mere failure to pay the Government revenue does not annihilate his right of occupancy. The Joint Judge in Tazubai's case admitted that if a khot had any proprietary right in the soil of his village, then he would be in the position of a superior holder, "and it is nowhere hinted in Section 3 or in Section 6 of Regulation XVII. of 1827 that this failure to settle with Government would do more than suspend his right." With regard to mirasdars the Honourable Mr. Elphinstone wrote, (page 18, Report on the Territories conquered from the Peshwa,)—"They are never dispossessed while they pay their tax, and even then they have for a long period (at least thirty years) the right of reclaiming their estate, on paying the dues of Government." The Sadar Court held, (Suryabhan *v.* Bukaji, II. Morris 189), that a mirasdar could after *any* lapse of time recover possession of his land. The High Court decided (Volume I., page 41,) that the limitation of thirty years applies.

Compared with mirasdars,

and with holders of gatkuli land.

In the case of a holder of gatkuli land this is what the High Court have held (Volume VI., page 86)—"In this case the plaintiff was the recognized occupier of the land (gatkuli), and though the land was still in his name in the Collector's books, he ceased to pay the assessment six years before the suit. The defendant was in possession; but it is not found whether the Government put him in, or whether he was merely a wrong-doer. If the Government has not put him in, and has taken no action upon the non-payment of the assessment by the plaintiff, the latter

will have a good title against the defendent, *because until his title is divested by the act of Government he retains his right.*" Thus it is always open to Government by sale to divest the khot of his right of re-occupation. In a letter from the Court of Directors, dated 15th May 1844, it was said—Paragraph 26— "It appears that by the recognized usage of the district, whenever the management of khoti villages is assumed by the officers of Government, in consequence of the failure of the khot to execute the annual kabulayat, and to furnish security for the payment of the revenue, the khot is at liberty *at any time* to resume the management of his village on payment of any arrears that may be due, unless he should have formally divested himself of his right by the execution of a Bedawa Patr, or deed of renunciation of the khotship. Khoti villages, therefore, under Government, for which no such deed of renunciation has been executed, cannot be regarded as lapsed, but must rather be considered to be under indefinite attachment. It is, however, stated that, in the event of any arrears of revenue being left outstanding, the rights and interest which the khot possesses in the village may be brought to sale, and purchased on account of Government, in which case any settlement that may be thought expedient can be made with the sub-tenants..... This right of re-entry on the management of the village after any period of time, however distant, must, we conceive, as in the case of a similar right on the part of the owners of deserted miras lands, be attended with considerable inconvenience in practice, and we do not consider that there would be any injustice in holding the right to have altogether lapsed, and the land to be at the absolute disposal of Government, if the khot should fail to exercise it within a reasonable period." This extract was sent to the Collector for his report. He replied (letter to the Revenue Commissioner, No. 254, 25th March 1845)—"I see no objection to Government making an enactment to place khots in the proposed Act* on the same terms as mirasdars with regard to the cessation of their rights of proprietorship to their watans after 30 years' non-exercise of the same. The present 'wahiwat' or custom of the country being opposed to such an arrangement renders the publication of a law on the subject necessary to make the alteration legal." Government replied (letter to Revenue Commissioner, No. 1710, 16th April 1845)— "The Honourable the Governor in Council concurs in your opinion of the inexpediency of applying to khots a legislative enactment similar to that which it is proposed to apply to mirasdars for limiting the right of re-entry, *since the remedy of a sale can always be applied*, and Government will then have the opportunity of becoming the purchaser, and then disposing of the village on such terms

Right of re-occupation.

View taken by the Court of Directors,

by Mr. A. Elphinston,

by Government,

* As late as 1855 there was before the Legislative Council a Bill for limiting the claim of mirasdars (see II. Morris 216).

and by Mr. Ellis.

as it may see fit, or rendering it khalsa." Mr. Ellis, then 3rd Assistant Collector, when reporting on this matter (No. 14, 21st July 1845), "considered it highly expedient that after allowing a reasonable period the Government should foreclose the right of the khot, and be at liberty to dispose of the village at their pleasure. If it be decided that a legislative enactment on the subject is desirable, I should think that a fair limit would be 30 years. *The case of miras lands appears perfectly parallel to that of khoti villages*, and an Act providing for the lapse of the former might well be applied to the khotships and dharas (or permanent holdings of this zillah)." Mr. Ellis thus treated a khot just like a mirasdar; and yet he seems to have thought at that time that the khots had no proprietary rights. He wrote in his report of the practice under the Peshwa's Government—

Practice under the Peshwa's Government.

"I find that it was not deemed necessary to obtain from the khot a formal renunciation of his rights (bedawapatr). If the khot abandoned his village on account of the loss incurred, or for other reasons, the Government at once sought for an eligible person, and agreed for a fixed annual settlement with a new proprietor. This new owner was immediately vested with all the proprietary rights previously exercised by his predecessor. This shows that the khot was considered to have no inherent right to the property of his village, but was a tenant of the Government, perpetually indeed, if he continued to perform his part of the contract, but if he failed and threw his village on the hands of Government, they at once sought for a new proprietor, to whom a grant was made, irrespective of any rights possessed by the former owner." These remarks (as shown in the first division of the enquiry) apply solely to the khots, who were temporary farmers and not to watandar khots. The Peshwa's Government *never* completely resumed a khoti watan, and granted it in perpetuity to another party. As was said in the Court of Directors' letter, a bedawapatr was always necessary before this was done. Numerous sanads can be produced in which it is said that the grantee being a watandar khot, and having thrown up the management of his village, the khoti was granted to a third party, but the original watandar having returned, he is hereby reinstated in his watan, and the temporary khot ejected.

View taken by Mr. Coles.

Besides the extracts made above from Mr. Coles's report No. 1490, 13th September 1850, on this point, that officer, "on a careful research into the records", wrote—"On villages or lands being surrendered by their proprietors on account of loss sustained, the practice in this Collectorate has invariably been to retain the estate's direct management, or to make the best arrangement for realizing the Government rent either by subletting the holdings in a village, or entrusting the entire village to a single individual under a temporary lease. I am unable, however, to trace a single

instance in which the arrangement has been made permanent." And, as shown before, he used nearly the same words regarding the practice under the Peshwa's Government.

and by Mr. Leighton.

In 1858 the Collector of Ratnagiri, Mr. Leighton, wrote a report (No. 1238, 10th September,) stating that the practice was uniform of allowing khots and dharekaris to resume the management of their villages and lands, which may be under the direct management of the Collector. As regards dharekaris, considering that the tenure resembled that of mirasdars above the ghats, he saw no objection to the practice. But as regards khots, he considered that they had no proprietary rights; that they were merely contractors for one year; that they did not cultivate the lands of their villages; that the profits received by them were merely wages for services performed in the collection of the revenue; that when they failed to pass the kabulayats, they gave up the Government service, and therefore that the practice should be discontinued.

Resolutions of Government on the above.

On this the Government Resolution was No. 3939, 5th October 1859, which said—"It is by no means established that the khot can insist on being restored, however unreasonable the length of time that he has been absent." In Government Resolution No. 4088, 20th September 1861, it was said,—"His Excellency in Council believes that it has yet to be proved that a khot, who has once lost his right of management by failing to pass his kabualyat, can enforce its restoration in the civil courts." But the principle had often been recognised by the civil courts, though not directly against Government, for Government had never disputed the point. To take one case out of many. In Apaji Narayen *v.* Naro Trimback (II., Borradaile, page 592), the Zilla Judge held that the plaintiff by the sanad and deed of sale exhibited by him was clearly proved to be the original proprietor of the village, and that the defendant had no hereditary claim to the property beyond having been placed in the khotship by the Sarkar during the absence of the defendant. The Sadr Court, after calling for further evidence, "fully affirmed the decree of the Zillah Judge."

Opinion of the Secretary of State.

The Secretary of State in noticing the Resolution abovementioned wrote (Revenue letter No. 3, 16th January 1862)—"It would, in my opinion, be most undesirable to allow the asserted right of the Government to interfere in regulating the relations between the khot and his ryots to become the subject of contest in a civil court in the existing state of the law." Subsequently, Tazubai's case did come into court, and it was then held that a khot had no proprietary rights; that he was not an "occupant"; that on failing to pay the Government revenue his right was annihilated, and that, if therefore Government gave back to him the village as an act of indulgence, he could not complain if in the mean-

while the relations between him and the ryots were changed. If on the other hand, in the case of watandar khots, Government when admitting a khot to re-occupation of his estate cannot alter the nature of that estate, by so much the more can they not do so when the khot has never lost possession of the estate.

Khots and their tenants compared with mirasdars and their tenants.

Mr. Ellis, as shown before, compared the khots to mirasdars and dharekaris, and as "occupants" they are exactly similar. The only difference is that a khoti occupancy is a village in which there may be some cultivators who have existing rights. But would Government interfere between a mirasdar or dharekari and his sub-tenants? Mr. Turquand wished Government to make *all* tenants occupants (giving the superior holders suitable compensation), not only the khots' tenants, but those of the dharekaris also. There are many dharas the proprietors of which never cultivate their lands, but let them out to ryots. Mr. Turquand wanted to have occupancy rights given to these tenants also. But Mr. Reeves wrote regarding this to Government (No. 2885, 17th September 1856):—"Does Government propose, wherever a man by industry, frugality, and ability may extend his possessions, to step in between him and his tenants or labourers, and say to him, you shall levy so much and no more from this man, and you shall pay that man so much and no less? Not a single officer save Mr. Turquand has hinted at the necessity of such interference, and Mr. Turquand, while he has frequently urged his opinion, has entirely omitted to support it with anything like a substantial reason."

Mention in Tazubai's case of khoti tenants.

Before quitting Tazubai's case it will be well to notice what mention is there made of the relation between the khot and his ryots. The Joint Judge said:—"The khot collects for his own benefit as much as he can from the cultivators; his demands being ostensibly limited by custom to one-half of the actual produce of fields of good quality, and one-third of fields of inferior quality." He also noticed that the khot had the "power of occupying on his own account land out of cultivation, and land from which ryots can be legally ousted." According to the judgment of Mr. Justice Newton it had been found by the lower courts that "a limit is fixed by custom to the demands of the khotagainst *the actual cultivators*." According to the judgment of Mr. Justice Tucker the khot "may levy rents from the occupants of the soil who are not dharekaris in excess of the Government demand, subject only to the limit which has been sanctioned by general usage." And "in the lands where the tenant-right existed, the khot would have a reversionary interest if the occupant abandoned them, or refused to pay the prescribed rent, and over the other lands his ownership would be complete." It seems thus to have been admitted that there were two kinds fo

tenants, those who had tenant-right, and those who had not, but could be legally ousted.

Applicability of Section 8 of Regulation XVII. of 1827.

It is unnecessary now to enter into any discussion whether Section 8 of Regulation XVII. of 1827 applies to khoti tenure. Messrs. Coles and Reeves thought that it did; Captain Wingate and Mr. Townsend that it did not. The word "khot" is not used in the section, but is found in the Marathi translation, and certainly the features of the tenure tally most remarkably with the language of the section. Whether the section applies or not, the following points have been already demonstrated in the course of this enquiry :—

(1.) The khots possess in some measure a proprietary right in the lands of their villages.

(2.) It has never as yet been attempted by Government to interfere with the internal administration of a khoti village as long as it has been under the management of the khot.

(3.) When a khoti village has hitherto come under Government management, then the lands of such village have reverted to Government unaffected by the acts of the shareholders or any of them, so far as the public revenue is concerned, but without prejudice in other respects to the rights of individuals.

Bombay Act I. of 1865: Section 37.

It remains now to consider the effect of Bombay Act I. of 1865. Section 37 runs :—"Whenever in the Ratnagiri Collectorate and in the Ryghar, Rajpuri, and Sanksi Talukas of the Tanna Collectorate the survey settlement is introduced into villages or estates held by khots, *it shall be competent* for the Superintendent of Survey or Settlement Officer, with the sanction of the Governor in Council, *to grant the khot a lease* for the full period for which the settlement may be guaranteed *in place of the annual agreements* under which such villages have hitherto been held; and further the provisions of Section 36 in respect to the right of permanent occupancy at the expiration of a settlement lease shall hold good in regard to those villages or estates."

In the above section the following points are worthy of notice :—

(1.) The last clause recognises the khots as "occupants."

(2.) Strictly speaking, though this was clearly not the intention of the Legislature, the section cannot apply to villages of sanadi khots, for such villages are not held under annual agreements but under sanads, the agreements being merely taken each year as security for payment of the Government revenue, and the due administration of the village.

(3.) It seems to be grammatically inconsistent to speak of leases being granted in place of such agreements. The agreements were executed by the khots to the Collector. When a lease is granted it is executed by the Collector to the khots.

But "it is a rule in the construction of statutes that in the first instance the grammatical construction of the words is to be adhered to. If that is contrary to, or inconsistent with, any expressed intention, or any declared purpose of the statute, or if it would involve any absurdity, repugnance, or inconsistency in its different provisions, the grammatical sense must then be modified, extended, or abridged so far as to avoid such an inconvenience, but no further." Mr. Justice Burton in *Warburton* v. *Loveland* (1 Hudson and Brooke, 648), quoted with other authorities at Bombay High Court Reports, Volume III., page 180.

Intention of the Legislature.

What, then, was the intention of of the Legislature? That is very clear. Mr. Ellis, when proposing the section, said:—"The proposed sections had reference only to the khots of the Southern Konkan—a class of superior holders whose rights were of a very long standing. The settlement of the revenue had been made with them, just as in ryotwar villages the settlement is made with the cultivator. For many years past annual agreements had been entered into with the khots for the land revenue due from their villages. But when the survey settlement was introduced into khoti villages, it was only fair that the khots should have the same advantages in regard to permanency of tenure as is guaranteed in other surveyed districts. *There was no reason why the guarantee should not be extended to them as to other occupants.* The first section proposed by him would effectually secure this object, and by recognising the rights of this class of superior holders to the villages in their possession, would remove their apprehensions, and induce them to accept the benefits of the survey with the same satisfaction that had been evinced by the ryots everywhere." In other words, the magna charta of the Bombay Revenue Settlement is, that while formerly Government could any year make a general survey, and increase the assessment, they now gave a guarantee that the assessment should not be raised for a fixed period; and while, on the one hand, Government are thus bound, on the other hand the "occupant" is free to resign his occupancy any year after giving due notice. As was said by Couch, Chief Justice, in Kolatkar's case (Bombay High Court Reports, Volume VI., page 191)—"The thirty years' term restricts the power of the Government to alter the assessment, but in no way enforces a continued occupation of the land upon the tenant while the term lasts." This privilege, then, was extended to khots as well as to other occupants; and

while formerly the Government revenue fixed in the annual agreement could be raised any year, the Survey Officer was now empowered to grant a lease guaranteeing that the assessment should not be increased for a certain period; but it could hardly have been intended that the khot should sign an agreement promising to pay the Government demand during the period of the settlement, or admitting that if he failed in that respect, his estate should by that act, and without the form of a sale, lapse to Government. To do so would be to deprive a khot of his rights as an occupant, whereas the intention of the section was to recognise those rights.

Another defect in the section is noticeable. "It shall be competent for the Superintendent ....to grant the khot a lease." Then it must be purely a case of option. The Survey Officer may or may not grant the lease, and the khot may or may not accept the lease in place of the annual agreement. But there is no provision in the law in case of such a non-acceptance, and thus the settlement must be incomplete.

Section 38.

We now turn to Section 38. It runs—"It shall also be competent to such officer, with the sanction of the Governor in Council, to fix the demands of the khot on the tenant at the time of a general survey of a district, and the terms thus fixed shall hold good for the period for which the settlement may be sanctioned. But this limitation of demand on the tenant shall not confer on him any right of transfer by sale, mortgage, or otherwise, where such did not exist before, and shall not affect the right of the khot to the reversion of all lands resigned by his tenant during the currency of the general lease." There is to be a limitation of the khot's demand on the tenant. Then the natural question is, who is the "tenant"?

Meaning of the word "tenant".

Turning to Section 2, Clause 1, it is seen that "tenant" is the person holding under an occupant or superior holder by a right derived from him, and otherwise than by ownership or inheritance"; that is to say, "*a tenant-at-will*". A watandar karda who has inherited his right of occupancy from his ancestors, who derived their right not from the khot but from a period anterior to the khot's possession, such a man is *not* a "tenant" according to the above definition.

A superior holder can, after giving his tenant-at-will due notice, demand from him what rent he chooses. That right is taken away in the case of the khots by Section 38, and they can ask from their tenants-at-will such rents only as the Survey Officers fix. Thus, the khots' rights are diminished, and the tenants' rights increased. The tenure of both is altered.

But, then, there occurs a great difficulty. The preamble of the Act runs—"Whereas it has been and is the desire of Government to equalise assessments, to ascertain and settle the obligations, and to record the rights interests and privileges of persons and classes owning and occupying land; and whereas it is proper to maintain by law all existing settlements which have been made under the authority of Government"—nothing about creating or altering tenures. And the "statement of objects and reasons" shows that it was intended to give a "specific legal sanction" to the survey operations, which are "in accordance with custom and usage, and not at variance with any law in force during the period of the operations." To deprive a superior holder of certain rights is not in accordance with custom and usage, and certainly at variance with all law and equity. It is thus clear that there is "something in the subject or context repugnant" (Section 2) to the construction of the word "tenant" in Section 38 as meaning a tenant-at-will. The definition is therefore, according to the rule laid down in Section 2 of the Act, useless.

How, then, are the words to be explained? "A thing which is within the letter of the statute is not within the statute, unless it be within the intention of the makers." (Bacon's Abridgment VII., 458. And compare Mr. Justice Burton's ruling above quoted.) What was the intention of the makers of Bombay Act I. of 1865?

Intention of the Legislature.

Turning to the debates in the Legislative Council it will be seen that the Honourable Mr. Inverarity, who was in charge of the Bill, was most careful in informing the Council, that the Survey Department, the operations of which it was the object of the Bill to confirm, did *not* inquire into and decide upon questions of proprietary and other titles to land (page 125 of the Revenue Survey Compilation published by Government). "Property of all kinds connected with the land is respected, and nobody's interest is sacrificed by this Bill. Proprietors of villages and fields are left unfettered in the management of their estates by this Bill. The operations of the survey are strictly confined to the survey and assessment of lands, and do not in any way interfere with proprietary titles" (page 129). Subsequently, after Sections 37, 38 had been introduced into the Bill, the Honourable Mr. Inverarity, in moving the third reading, said:—"The record required by Section 27 (containing all necessary information in regard to landed tenure, and the obligations, rights, interests, and circumstances of the various classes of the community) does not confer on any one any rights not already in existence. Survey Officers do not decide upon questions affecting landed and other interests. They merely prepare a record of what they find in existence" (page 217).

"The Bill does not touch questions of title or tenure." Other extracts might be given showing that it was not the intention of the Legislature to alter the relative rights of parties.

What, then, could have been the intention of empowering the Survey Officers to fix the demands of the khot on the tenant? This is seen by reading the speech of Mr. Ellis regarding a memorandum drawn up by Mr. Wishwanath Narayen Mandlik on the Bill. In the memorandum it was objected that while Regulation XVII. of 1827 "authorised settlements to be made with the person holding the highest recognised right by the custom of the country, the joint rules only recognise those in whose names the land is entered in the survey record, and the survey record recognises only those who actually cultivate the land, leaving aside the various kinds of middlemen spread over a considerable part of the Southern Konkan and a small portion of the Northern Konkan" (page 154).

The Honourable Mr. Ellis replied that the khots were not ignored, for a settlement was already in progress in the Konkan, "and he hoped to satisfy the khots that their rights under this settlement will in no way be interfered with by the proposed law." Then, after stating that the khot had an interest in the lands of his village which should be recognised—"The recognition by no means implied that the rights of the khot's tenants *(where these have any proprietary or occupancy rights)* would be ignored. The clauses which he would propose at the proper time would, he trusted, be sufficient to define the right of the khot and his tenants, and thus, *by defining what is now undefined,* place their relations on an equitable and satisfactory footing." He then read the Government Resolution No. 1832 (considered in detail above), in which it was ruled (paragraph 12) that the khot should give leases to the *permanent* occupants of khoti lands, a maximum assessment being fixed beyond which the khot will not be permitted to tax the sub-tenant. It is to be noticed that all the paragraphs in the Resolution relating to transfer were not read, merely part of the 17th, which said: "To give the ryot the right unrestrictedly in all cases would probably be to confer a new privilege, and to lessen unduly the rights of the khot." So Mr. Ellis said: "For this reason provision has been made in the leases given by the khots to the ryots, reserving to the former the right of veto upon any transfer." This should be compared with the 18th paragraph of the Resolution as given above.

Subsequently, when the Honourable Mr. Ellis introduced Sections 37, 38, he said of the latter (page 176) that it "would confirm that portion of the khot's settlement which prevented the khot from exacting more than was fair from the inferior holder," (*i.e.*, paragraph 12 of the Government Resolution which referred to

the *permanent* occupants of khoti lands). "At first sight such, a provision might appear to interfere with the rights of the khot but the *actual cultivators* of the soil had also rights recognised by the custom of the country which the khot could not invade. These rights might justly form the subject of legislation, and, indeed, in a Bill like the present, could not be safely ignored." Actual cultivators—this is the term used by Mr. Justice Newton in Tazubai's case. It may mean any kind of tenant, or it may mean the old wataandar tenants. Mr. Ellis clearly meant it to apply to those tenats and whose rights the khots could not invade, *i.e.*, not mere tenants-at-will.

If there were any doubt on this point it would be removed by the following extract, page 191 :—"The Honourable Mr. Ellis explained that Section 38 provided all the protection that was required by tenants *who had a permanent interest in the soil.* But there were many grades and classes of tenants, beginning with dharekari, or tenant from whom only the survey assessment could be demanded, and reaching down to those who occupied a position hardly better than that of hired labourers. It was easy to decide by local inquiry at the time of settlement which of the sub-tenants were of this class, and which of them of the class possessing a higher interest in the soil than that of tenants-at-will." As Mr. Inverarity had said that the Survey Officers do not decide upon questions affecting landed and other interests, it is hard to understand how they can decide whether a cultivator is a permanent tenant or a tenant-at-will. That, however, does not alter the intention of the makers of the Act.

"Tenant" means *permanent* tenant.

That intention being clear, *i.e.*, that the Survey Officer should define what is undefined, and in the case of a permanent tenant who cannot be ejected so long as he pays the customary rent, fix that customary rent, it is easy to understand the provisions of Section 38. The word "tenant" there used, has no reference whatever to the definition in Section 2, which was framed *before* Sections 37, 38 were inserted in the Bill. The Survey Officer was to fix the demands, that is (to use the words of the Government Resolution on which Sections 37, 38 were based) to fix a maximum assessment beyond which the khot could not tax his tenant. It is clear, then, that this provision presupposes that the tenant had previously occupancy rights. Otherwise what use would there be in the Survey Officer limiting the khot's demand? No security would thereby be provided for the tenant, for the khot might after due notice eject the tenant. This is clear from a comparison of Sections 36 and 38.

By Section 36 the right of occupancy belonging to a ryot holding his land direct from Government was declared to be a

transferable and heritable property. By Section 38 the limitation of the khot's demand on the tenant was declared not to create a transferable property, where such did not exist before. There was no need to declare that the limitation of the khot's demand did not create a heritable property, for the limitation was meant to apply solely to those ryots who are hereditary occupants. If the Legislature had intended to create a heritable property, there would have been a distinct provision to that effect in Section 38. But the framers of Act I. of 1865 did not intend to *create* any rights, and thus it is clear that under the authority of this Act all the Survey Officers can say to the khot is, 'If so and so is a permanent tenant under you, you may not demand more than such and such rent from him.'

The same conclusions are arrived at by another line of argument. Thus, by the second proviso at the close of Section 38, the limitation of the khot's demand on the tenant is not to affect the right of the khot to the reversion of all lands resigned by his tenant during the currency of the general lease. Now, if a tenant holds his land from the khot according to the definition in Section 2 of the Act,—that is to say, is a tenant from year to year, or for a term of years,—it is clear that it is incorrect to say that the khot has a reversionary interest in the land resigned by such a tenant. On the other hand it is a well-known feature in the khoti tenure that when a permanent tenant dies without heirs, his land reverts to the khot, and in the same way if a permanent tenant resigns his land, it reverts to the khot. So the language of the section is intelligible only on the supposition that the word tenant means those cultivators possessing rights of permanent occupancy. This is equally clear on a consideration of the first proviso in the section, for it is absurd to suppose that a yearly tenant, or a tenant for a term of years, can possess the right of transfer by sale, mortgage, or otherwise; whereas, on the other hand, it is well known that the permanent tenants in a khoti village may be divided into two classes, (1) those who do possess the right of transfer without the consent of the khot, and (2) those who do not possess such right.

It has been noticed that Section 38 in no way grants a heritable right of property to the tenants therein indicated. It should also be noticed that there is no provision directing the khot to sign any agreement, or lease, or counterpart of a lease binding himself to accept as final the "limitation" fixed by the Survey Officer. Reading that section strictly (as indeed should be done), and supposing that all the Survey Officers attempted to do was to say to the khot, 'If such and such a cultivator is your permanent tenant, the rent which you may demand from him is limited to so much,' still

there is nothing in the law empowering any officer to call upon the khot to sign any agreement binding himself to that limitation. But Major Waddington, with his letter No. 68, 2nd February 1867, forwarded a translation of the lease which was granted to the khots, and a counterpart of which they were compelled to sign, or in default to have their villages attached. The thirteenth clause ran—"Whatever khot nisbat land has been entered in the survey papers in the name of a cultivator, you must, without let or hindrance, continue to him and his heirs. The assessment of that land has been fixed by the survey, and you must collect according to the following scale on account of your profit (फायदा) during the term of your lease."

Subsequently the Collector issued a proclamation to the khots, to the effect that they might pass an annual agreement, or accept a thirty years' lease, as they chose, and that the form of the agreement and lease had been amended. The fifth clause ran—

"I will pay the assessment mentioned in the first and second clauses, recovering from the ryots rents including the local cess as set forth below. The assessment and khoti profits on the khot-nisbat lands which have been entered in the names of the cultivators in the survey records, and the assessment on which has been entered in the names of the tenants in the survey as provided in Section 38, Act I. of 1865, I will recover for the current year as set forth below:—

(Then follow details.)

"I will also recover the local fund cess from them, and nothing more." It is easy to see how totally opposed these clauses are to the letter of the law.

Sections 37, 38 inconsistent with the rest of the Act.

There is another point, a consideration of which shows how Sections 37, 38 were made law without due regard to the other provisions of Act I. of 1865. Thus, the provisions of these sections are to be carried out, "whenever in the Ratnagiri Collectorate .....the Survey Settlement is introduced into villages or estates held by khots." The *natural* sense of these words is that when the Survey Officers apply the new survey settlement to a khoti village, they may, with the sanction of the Governor in Council, grant the khot a lease, and may also, with the sanction of the Governor in Council, fix the demands of the khot on the tenant at the time of a general survey of a district. It was held by the District Judge in the famous Kolbandre case, (judgment in which was delivered after these notes were originally compiled,) that "the two sections are connected together by the sentence—'It shall also be competent, &c.'— at the beginning of Section 38; and this sentence has reference to the words—' Whenever.....the survey settlement is introduced, &c.'—in Section 37." This seems to be the case,

and thus one would naturally take the words "whenever the survey settlement is introduced," and "at the time of a general survey of a district," to mean the same thing. But it is specially enacted in Section 46 of the Act that the survey settlement is *introduced* into a village when the assessment settled thereon under Section 25 has obtained the sanction of the Governor in Council. Section 25 provides for the legality of a settlement made by a Superintendent of Survey for a period of one year. For a further period the sanction of the Governor in Council is necessary, who may, under Section 28, guarantee the settlement for a full period not exceeding thirty years. The utility of these provisions with regard to ryotwar villages is obvious. Government deal solely with the actual cultivators. The new rates of assessment may be levied from them for one year without sanction, but the full benefits of the settlement do not accrue till the rates are finally sanctioned by the Governor in Council. In khoti villages it is different, where Government deals both with the cultivators and with the middleman. The result is, that, according to the strict letter of the law, the Survey Officer not only must get the special sanction of the Governor in Council, but must also wait before the settlement is *finally* sanctioned before he can grant the khot a lease. And, in the same way, if Sections 37 and 38 be read together, the Survey Officer cannot fix the limits of the khot's demand on the tenant before the limit of the Government demand upon the khot has been *finally* sanctioned by the Governor in Council. It can hardly be supposed that the Legislature intended two separate sanctions to be necessary before the provisions of either Section 37 or Section 38 could be carried out. As shown in discussing the word 'tenant,' the sections were evidently framed without giving a thought to the rest of the Act.

If any further arguments are necessary to show the inconsistency of these two sections, a reference may be made to paragraph 5 of the memorandum No. 3945, 21st August 1867, from the Revenue Commissioner, N.D., where that officer refers to the arguments brought forward, "that in addition to being superior holders (heading k of Section 2 of the Survey Act) as being khots, and thus having the right to engage with Government for the land revenue due on their villages, they are, as far as concerns 'khot-nisbat' lands, occupants (heading j of the same section) as the persons whose names are entered authorizedly in the public accounts as responsible to Government for the payment of the assessment due upon those lands. Their sub-tenants' names have not hitherto been so entered, and one of the provisions of Section 38 is that the limitation of demand for rent on the tenants shall not confer any right of transfer by sale, mortgage, or otherwise. The latter, then, are certainly

not occupants, nor have they the privileges of occupants as defined in Section 36. If they are not, the khots must be the occupants, or there are none—a *reductio ad absurdum* which the Legislature did not contemplate. If the khots are the occupants, they should have the privileges of occupants under Section 36, one of which is that of sub-letting their lands on any terms they think fit, of which they would be deprived by the enforcing against them as khots the provisions of Section 38, by which their demands to rent would be limited."

That the khots are treated as occupants is clear from the fact that assistance is given to them by the Revenue authorities in collecting their dues on the strength of Section 44 of the Survey Act, which provides that "*occupants* shall, as regards the assistance to be given to them in the recovery of their dues from their *tenants*, be regarded as superior holders, and entitled to the assistance provided for that class of holders in Chapters VI., VII., Regulation XVII., of 1827." It may well be asked—How can a dharekari or a watandar cultivator be considered a "tenant" under the definition in the Act, and yet assistance is given to the khot against such as these? Or, on the other hand, in the case of a defaulting "khot-nisbat" tenant, who may be really a "tenant" under the definition in the Act, how is it that in hundreds of cases his supposed right of occupancy is sold, when in truth he is not an occupant?

Enough has been said to show the utter unsuitability and inadequacy of the present law for carrying out any settlement in khoti villages.

Terms "khoti phaida," "khot nisbat," "khoti khasgi"

Before proceeding with the history of the settlement, it may be well to notice the terms "khoti phaida" (khot's profits), "khot nisbat" (belonging to the khot), and "khoti khasgi" (private khoti). These are terms coined by the Survey Department. Strictly speaking, the "khot's profits" are the difference between the Government assessment and the rents collected by the khot from his tenants, *plus* the produce of the lands in his own occupation. In no case was the rent calculated in proportion to the Government assessment, except in those rare instances in which dharekaris resigned their superior rights to the khots and became his permanent tenants on the agreement that they should pay him so much in addition to the Government assessment, but no extra cesses. [Thus, daspatkaris paid eight annas on every maund of assessment, dedpatkaris paid one and a-half maund for every maund, pannedupatkaris one and three quarters, and dupatkaris two maunds for every maund of assessment.] When, therefore, the "khoti phaida" is reckoned as a percentage on the Government assessment, this is purely an arbitrary calculation. Of course, if it were an invariable rule that the

Government assessment is a fixed share of the produce, and that the rent paid by the tenant to the khot was always a fixed share of the produce (it was generally, but not always), then the calculation would be correct. But this is not so. Again, all land in a khoti village that is not dhara must be khoti. The Survey Officers drew an arbitrary distinction between the lands cultivated by the khot himself or by his hired labourers, which they called "khoti khasgi," and the rest which they called "khot nisbat." As will be shown by the reports of the Survey Officers, the latter denomination includes lands held by recent cultivators, but the fact of the distinction being made has led some officers into the mistaken idea that all khot-nisbat land must necessarily be held by permanent tenants. This is manifestly wrong.

Introduction of the Survey into Ratnagiri; Bankot.

We now come to the introduction of the survey settlement into the Ratnagiri Collectorate. Colonel Francis forwarded to the Collector, with his letter No. 66, 27th January 1866, his proposals with regard to the Bankot Division of the Suverndrug Taluka. He proposed (paragraph 23) the same plan of settlement as had been already introduced into some districts of the Tanna Collectorate, which "has since been confirmed by legislative enactment, the provisions of the measure being embodied in the Survey Act."

Distinction between recent tenants and those of long standing disregarded.

On 2nd February 1867 Major Waddington forwarded to Colonel Francis his report No. 68, reporting the extension of the survey rates to all the villages of the Bankot Division. He wrote (paragraph 23): "The tenants of khot-nisbat lands hold from the khot at 'makta' (contract) rates paid in kind, which in the case of *recent tenants are liable to fluctuation*, while tenants of long standing pay at a fixed 'makta', neither party, however, having the right to sell or otherwise dispose of their land. *It was at one time in contemplation to recognise the distinction between the two classes*, but it was found inexpedient to press the point, and it was finally decided that all purely khot-nisbat tenants should pay to the khots, in addition to the survey assessment, as follows: on rice land fifty per cent. in grain, on warkas and rabbi seventy-five per cent. in money."

Objections of the khots.

Colonel Francis, in forwarding the above report, wrote (No. 248, 22nd March 1867, paragraph 8), that the khots' objections were confined almost entirely to two points, viz., to the rule fixing the limit of their demand, *i.e.*, their profit upon the Government assessment, and to the registry of the tenant's name. "The latter is the natural sequent of the former measure, for it is obvious that there is no security for the levy of the fixed demand, unless there is a tenant to whom the right is delegated. These two conditions are the whole essence of the settlement, and to concede them would involve the continuation of the present objectionable system."

Introduction of the Survey into Khed.

In 1867-68-69 the settlement was introduced into the Khed Peta, and some lengthy reports were written referring especially to the survey rates. The Collector and his First Assistant contended that

Report by Mr. Nairne. Ryots opposed to the survey.

the rates were too high. Mr. Nairne wrote (paragraph 2, letter No. 77, 27th November 1868) :—"There are certain facts which make it clear to me that the ryots are not merely the tools of the khots, but are really fighting for themselves, and against what they believe to be the harshness of Government. These are, 1*st*, the very numerous cases in which the ryots allow themselves to be sold up rather than pay; 2*nd*, that in very many cases they ask for their dhara land to be sold rather than their chattels, and that nobody bids a fair price for the land; 3*rd*, that they constantly ask for their khoti land to be sold, which under the survey regulations cannot be done.... I think the real loss to the khots by the survey settlement has never been sufficiently admitted.

Effect of the Survey on the khoti system;

"*The survey does practically break down the khoti system*, and in so far as we have tried to make the khots believe that they are not injured by it, we have, I think, been wrong..... One point which I have never seen mentioned, and which to my mind accounts chiefly for the hostility of the khots, is this:—It is rare to find a village in which some share of the khotship has not been alienated either by sale or mortgage; not by any means rare to find villages where the whole khotship is thus alienated. Now there is no doubt that these mortgagees and purchasers laid out their money, in very many cases quite recently, in the trust that things would remain as they were, or at all events that the position of the khots would not be much altered, and these are, no doubt, the men who feel themselves the greatest losers by the survey. On the other hand there can be no question that khots in difficulty now find that their chances of raising money on their khotships are very greatly diminished, *if not entirely gone*. So that pretty nearly all classes of khots are most strongly interested in overthrowing the survey, if possible, or at all events modifying its provisions..... I cannot see the use of blinking this fact, or trying to make the khots believe that the survey is for their good, if they could only see it. But the more that it is acknowledged that this is the position we shall continue to be in with the khots, the more necessary it will be, it seems to me, to conciliate the ryots in every way, and to make it apparent, even to the densest of them, that they are to be gainers by the survey, and that Government is quite willing to give up something, as well as to make the khots give up something, in order to ensure their advantage." Another reason for the dissatisfation felt by the ryots is thus expressed by Mr. Nairne (paragraph 9)—"Under the khots before the survey, though the khot very likely managed to get more in value out of the ryots, he did it in a way that the poorer classes felt less onerous. Thus,

especially on the ryots.

to begin with, he would take his share out of the crop, as it was reaped, and any cash he could screw out of them afterwards. While any other deficiency they would make up by working in his fields for him, and by doing all manner of more or less menial service. The khot therefore, of course, could get a great deal out of the Kunbis and Mahars in one way and another without making them feel it very severely. Now, however, the ryot has to pay first his regular instalments of the Government assessment in cash, and afterwards, at a time when he is unlikely to have any grain left, the khot's profit in kind. And for non-payment of this, as well as of the Government assessment, he may be sold up. The khot will still, of course, for some time get a certain amount of gratuitous labour out of these low-class ryots, but will not on that account make any abatement in the demand for the legalised profits. Not only the cash payments, but the necessity of paying regularly is new, and, I must add, obnoxious to these wholly uneducated people, and though I do not think that any reason for perpetuating the old irregular modes of payments, I do think it a reason for making the assessment very low and easy to them."

Mr. Boswell's Report on the above.

The Collector wrote on this subject (paragraph 7 of his report to the Revenue Commissioner, No. 1959, 10th December 1868) "Considering that we are obliging the khots for the sake of the general good to sacrifice some of the privileges they have hitherto most prized (a measure I most heartily approve), I should have been more satisfied to see Government making a sacrifice of revenue rather than deriving a profit from the introduction of the new assessment." In paragraph 13 Mr. Boswell wrote:—

Khoti phaida an addition to the assessment.

"There is one other consideration of a very general nature which, though it does not affect the justice of our settlement, has yet in all parts doubtless gone a long way to make it unpopular in khoti villages. It is this, that now the cultivators in Government villages will be so much better off, and so much more lightly taxed than those in khoti villages, whereas hitherto they have paid almost alike, (excepting only that they have been freed from the unauthorized exactions of the khots). For Government villages have been paying ardhel or tirdhel, as the case may be, just the same as the khoti villages alongside of them."

From this it seems that the "khoti phaida" is *in addition* to the survey assessment, and not calculated as a certain portion of the survey assessment. The Survey Officers, it should be remarked, did somewhat reduce the rates. The Survey Commissioner wrote:—

"It is not by a lowering of rates that we can hope to effect any material improvement in the condition of the people of this wild country, but by placing a limit upon the khot's demands."

The settlement was introduced into the Saitowda Peta of the Ratnagiri Taluka in 1867-68, the "khoti phaida" on warkas land being fixed at 50, and not 75 per cent. The cultivators seem to have been in a very indigent condition, and the Survey Officers attributed this circumstance 'solely and entirely' to the grinding exactions of the khots; but the Collector and the Revenue Commissioner thought there were other causes also, such as density of population, want of communication, &c.

The settlement was introduced into the Dapuli (formerly called Severndrug) Taluka in 1868-69, but no discussions seem to have taken place with regard to the relations between the khots and their tenants.

The same may be said with reference to the settlements in the Ratnagiri and Chiplun Talukas in 1869-70.

Memorandum by Mr. Nairne on the khoti history.

Mention must now be made of a "memorandum on the khoti history," drawn up by the First Assistant Collector, Mr. Nairne, dated 10th August 1867. He notices briefly some of the authorities which have been so largely quoted in this enquiry, and then sketches Captain Wingate's scheme of settlement, mentioning that "atveth," which Captain Wingate described as so oppressive, and many of the cesses which the khots had been in the habit of exacting from the ryots had been abolished, and that the khots were now "bound to give their ryots regular receipts as in all Government villages, and the breach of this order is constantly punished by fine under a clause in the yearly agreements. All these reforms of abuses have been effected simply by the orders of Government or of the Collector and without legislation, though it is evident that they are the strongest possible argument against the khot's present claims. With regard to the khot's right to eject tenants (a power which they undoubtedly exercised) it does not appear that a legal decision on the point has ever been obtained. It is customary for the ryots to pass yearly agreements to the khots for their land, just as the khots do to Government for their villages, and by inserting in the agreement the words that the land is held for one year, two years, or five years, the khot creates for himself a proof of his right of ejection, which is afterwards by the civil courts held conclusive against the individual who signed the agreement*. ..... Under the authority of Section 38 of Act I. of 1865 the ryots are secured the possession of the lands they occupy at the time of the settlement for thirty years.† ..... In point of fact the whole matter at issue is whether or not the tenants have any right in the land they occupy."

* Not by *all* civil courts.

† Where is this provided?

The object of this enquiry has been to answer that question.

Memorandum by Mr. Boswell on the khoti history.

Accompanying this memorandum is one by the Collector, Mr. Boswell. That officer thought that the tendency of the khoti system was to degrade the ryots, and that year by year the khots had been adding to their power. "Their claims have, however, been too long silently allowed to give Government any chance of controverting them, except by special legislation ..... It was this that, by showing how futile it was to attempt to do anything to control their power over the cultivators, at last led to the passing of the Bombay Survey Act ..... The main object of this Act is to set a limit to the exactions of the khot from his tenantry, who form the bulk of the people. If it accomplishes this end it will prove the magna charta of the ryots. If it fails, the whole survey will have been a mistake, and all idea of much ameliorating the condition of the ryot must be given up till another Act has been passed."

Report by Mr. Nairne showing the ill effects of the Survey.

As showing that the present survey operations have been unsuccessful, reference may be made to letter No. 264, dated 25th July 1872, from Mr. Nairne, the First Assistant Collector, to the Collector of Ratnagiri, regarding the question of an additional permanent establishment for the Khed Peta. He admits that "a proposal for exactly double the subordinate establishment that was fixed on as sufficient only five years ago needs to be supported by strong arguments," but he shows the extraordinary circumstances of the case, and that there is no immediate prospect of the Peta returning to a more normal state. "It is evident that the establishment, which is sufficient for 109 villages entirely managed by their khots, will not be nearly enough when 87 of them are managed directly by Government as ryotwari villages by means of 'japtidars,' who being temporary servants require much more looking after than the same number of talatis would. But there must also be taken into consideration, first, the large number (about 700 in the last 12 months) of cases in which property has to be attached for non-payment of rent, and the proportionate number (200) of sales in default; and, secondly, the large number of petitions and references regarding survey work that still come for enquiry. Even now, five years after the introduction of the settlement, there are constant petitions from ryots that their dhara land has been entered as khoti, or that the boundaries of their land are confused. The unsatisfactory state of affairs which now exists began with the introduction of the survey in 1867, and has continued without any sensible improvement during the five years that have since elapsed. On July 1st, the balance outstanding for collection was about Rs. 13,000, of which only Rs. 6,000 were khot's profits, about which the dispute may be called one of principle ..... A legal decision on the points in dispute between

Numerous attachments, sales, petitions, outstanding balances, &c.

the khots and Government, even if it could be obtained now, would do every little good, because, as explained above, the khots of 87 villages out of 109 steadfastly refuse to give even the old kabulayat with the survey rates; so that even if Government were to concede all the difference between the old kabulayat and the new 'patta,' though the khots might be beaten, Government would not apparently stand any better with the ryots. In fact, we have had five years of Government management of this peta on survey principles, and the result is as described."

Mr. Nairne followed up this letter with another, No. 299, dated 24th October 1872, in the 10th paragraph of which he recapitulated "the more striking results of the survey settlement of the Khed Taluka after five years' trial. The outstanding balances have in the last two years varied between Rs. 19,000 and Rs. 3,000, having in the three previous years been much higher, and at the end of 1871-72 amounting to Rs. 14,000, or 14½ per cent. of the total of Government and khoti revenue. In the last four years there have been 5,656 attachments of property for non-payment of revenue, and 1,294 sales, and more than four-fifths of these have been in the last two years. The appeals against entries of land in the survey papers have numbered 1,566 in the five years, of which there were 200 last year. All these figures, it must be remembered, relate to a district of only 109 villages." Paragraph 6:—"In the three months, from 1st May to 31st July 1872, the number of attachment for khoti phaida alone has been 250, and of sales 62. . . . It constantly happens that the defaulters have no movable property whatever, in which case their land is attached. . . . In the last two years 24 holdings have been sold in default of revenue. This, I believe, does not include sales for arrears of khoti phaida, of which there have been five in the last three months."

Sale of tenants' holdings for one pie.

Mr. Nairne then describes the practice, which has arisen on account of there being so few purchasers of land, of the Mamledar bidding one pie for a khoti holding on behalf of the khot, and entering it in the khot's private holding, and taking the arrears for which the sale was made from the khoti phaida balance of the year. In the Khed Peta 2,022 acres of land paying a Government revenue of Rs. 715 have thus been added to the private holdings of the khots; and of this, 525 acres, paying a Government revenue of Rs. 116, have since gone out of cultivation. This in a district where there is so much competition for culturable land is significant.

Mr. Elphinston's Report on the above: question of measurement of warkas.

These reports were forwarded to the Revenue Commissioner by the Collector of Ratnagiri, Mr. Elphinston, with his letter No. 755, 26th March 1873. In a postscript he gave the details of the petitions and sales noted above, and stated that 616 summary possession suits took place in the last five years, out of which above one-

fourth were made in consequence of the wrong entries of the cultivators' names in the survey records and the careless demarcation of the warkas pot-numbers. "Two prominent reasons why uncertainty exists with regard to the boundaries, particularly of the dry-crop lands, are pointed out to me by the cultivators as follows: 1stly, that the occupants at the time of measurement showed more land than they actually held, and that they find since they have to pay the assessment on all the lands they pointed out as theirs, while the actual cultivator, who was not present when the land was measured, pays nothing at all; 2ndly, that the cultivators were asked by the measurers in some cases how many ploughs' land each cultivator held in a steep hill-side number, and the divisions of the number were not measured, but were made by guess at the suggestion of the cultivators who happened to be present."

In the body of his report the Collector enters fully into this question of the measurement of warkas land, and gives an instance of some land being entered in the names of six persons, while it was cultivated by nineteen separate individuals. He also contended that without any detailed measurement of each cultivator's pot-number (*i.e.*, each separate field as distinguished from the large block of land called the survey number, which includes several persons' cultivation), it was impossible to tell how much "kharab" to deduct in order to make up the culturable area, for which only each ryot is bound to pay assessment and khoti phaida.

In the 20th, 21st, and 22nd paragraphs, and in Appendix V. to his letter, several instances are given of the inaccurate measurements of warkas land.

The Collector also in several paragraphs showed the difficulty of knowing whether land should be entered as dhara or khoti, and gave instances of the discontent which was prevalent regarding that matter. The question of rates and classification of assessment, though largely discussed by the Collector, cannot be entered into in this enquiry.

Remarks by the Survey Commissioner on the above, regarding attachments and sales.

On these reports of Messrs. Elphinston and Nairne the Survey Commissioner recorded some remarks, dated 19th May 1873. Keeping solely to the points mentioned above, it appears that Colonel Francis did not consider the number of attachments (5,656) large when contrasted with the number of holdings out of which the attachments and sales had been made, especially "when we consider the absence of capital amongst the cultivators of the district, the poorness of the cultivation, and the fact of a large proportion of the cultivated land requiring periodical fallows."

The large proportion of attachments in May, June and July he considered due to the failure of crops. He also opined that the value of the grain payment representing the khots' profits, and being in excess of the fixed assessment, should not be calculated at the current market-rate at the time at which the levy was enforced, but according to the market-rate of the period at which the instalment was due. The sale of 2,022 acres of land in four years he did not consider remarkable, and the circumstance of 525 acres being out of cultivation he attributed to the fact of its being land which has been worked out and requires fallow. "I have from the first been apprehensive that we should find that the section of the poorer class of cultivators would not continue to hold their warkas lands requiring a long period of fallow upon the terms of of the settlement, which provide that they should cultivate portions of their holding in rotation, paying however for the whole."

outstanding balances,

With regard to the large amount of outstanding balances, he thought that the circumstance should not be overlooked, "that in khoti villages we have to collect not only the Government assessment, but the subletting rents of the superior holder, from whom alone the revenue is collected in other districts."

petitions,

The large number of petitions he attributed in a great measure to the determined opposition on the part of the khots, who tried in every way to prevent the settlement being carried out.

and measurement of warkas.

With regard to the measurement of warkas, Colonel Francis stated that *some* measurement of internal holdings was always made, but after mature consideration of all the circumstances of the case he came to the conclusion, that it is advisable to give up the plan of having a fixed cash and grain payment for warkas lands, based upon a detailed survey of each individual holding.

Report by Mr. Havelock on the above: opposition of all parties to the survey.

The reports from Messrs. Elphinston and Nairne were forwarded to Government by the Revenue Commissioner with his letter No. 1580, dated 28th April 1873. After a three months' residence in the Collectorate, and constant communication with the local officers of all grades, and with representatives of the three principal divisions into which the land tenures of Ratnagiri are divided, Mr. Havelock was of opinion that neither Mr. Nairne nor Mr. Elphinston had at all exaggerated the extreme discontent and alarm which prevail among all classes of the community. Paragraph 7:—"With regard to the khot interest, its long-sustained hostility is well known to Government; but I do not think it is at all recognised at head quarters how violent and widespread is the aversion with which the survey assessment and its attendant provisions are regarded by other classes than the khots—that is, by the dharekaris and the different kinds of permanent occupants—and even by that class in whose interest principally the conflict with

the khots is understood to have been commenced, the tenants without right of occupancy, commonly called tenants-at-will Some degree of complacency may, indeed, be asserted, as is natural on the part of the last-named class, who have, as khot-nisbat tenants, obtained a pseudo-occupancy in the survey records, but it is associated so universally in so uncompromising a manner with opposition to the indispensable payment of khoti profit, that I hardly know whether, for the purposes of practical exposition, this class even can be regarded as an exception to the rule, that in the Talukas of Ratnagiri, to which the Revenue Survey operations have been extended, the system has absolutely no friends."

As to the question of dhara being entered as khoti land Mr. Havelock thought that much of the confusion was due to the absence of one or more of the parties interested when required before the Settlement Officer. With regard to the measurement of warkas land he considered that it would be no hyperbole to say that there had been no measurement at all, and that the whole, if accuracy was demanded, would have to be done over again. One great difficulty in Ratnagiri the Revenue Commissioner considered to be the deficiency of agricultural produce for the support of the people, causing at once an extreme competition for the possession of land, and a minimum of capacity among the poorer class of cultivators to apportion a share of their produce for conversion into money for the payment of the Government demand. He also considered the rule enforced in the district, that a khot-nisbat ryot cannot resign a single field without resigning his whole khata, without authority, and most harsh in its operation.

Question of grain or cash assessment.

A great portion of Mr. Havelock's report is devoted to the question of rates of assessment which it is not desirable to enter upon here. One paragraph (47), however, may be quoted—"I beg respectfully to state that it appears to me well worth the consideration of Government, either that a material abatement of the Government fixed demand in cash should be made in the districts of Ratnagiri brought under survey and assessment, or that a return to the practice of grain rental and annual commutation should be permitted. I prefer the latter course, because I think the Government revenue would thereby suffer less dimunition, and because I fear that the poorest cultivating classes are not those who would principally benefit by the abatement which might be given."

Letter from the Assistant Judge. Suits between the khots and their tenants.

These notes were originally forwarded to the Collector of Ratnagiri by the compiler, the late Extra Assistant Judge at Ratnagiri, with a letter dated the 9th January 1873. Most of the matter in the letter has been incorporated into these pages, but there are one or two points which may be mentioned here. Speaking of the deplorable opposition of the khots towards the ryots he

wrote—"It can safely be said that hundreds of suits have been brought by the khots against their ryots merely on account of the survey. I have often asked a khot in court why he sought to eject his tenant. The invariable reply is, because the Survey Officers will enter the land in the name of the ryot, and thus my rights will be invaded." Again, it was pointed out that, owing to the practice of selling up ryots who could not pay the khoti phaida, and after a bid of one pie entering the land in the khot's name, there was actually an inducement for the khots to decline the management of their villages, since in a few years most of the land would be entered in their names, and then on resuming the management of their villages they could demand what rent they chose on account of these lands; and thus the survey operations would be made of none effect.

Effect produced by selling the tenants' holdings.

Mr. Elphinston's Report on the above.

The forwarding letter of the Collector was No. $\frac{A}{421}$, 10th March 1873. Mr. Elphinston dwelt upon the opposition shown to the survey (the khots' great objection being to the entry of the tenants' names in the registers), as shown by the fact that from 1867—1872 inclusive, 140 suits had been filed against the Collector with reference to the Survey Settlement, and that out of 682 khoti villages in the four surveyed Talukas of Dapuli, Chiplun, Ratnagiri and Gohagar, the khots in 417 had refused to accept the terms of the survey lease up to the present time, notwithstanding that every inducement, compatible with the present system, had been held out to them. With reference to the different classes of tenants, the Collector believed that the distinction between the badhekari and watandar kul is so well known that in almost every village the villagers themselves will say of each other which of the two they are; but that in the survey records the names of the khot's yearly tenants, even of recent date, found cultivating at the time of the survey have been entered as khot-nisbat kuls. He pointed out that in the well-known Ambegaum case it was actually pleaded for the defence that the survey operations had been legal, because the cultivators, whose names had been entered as khot-nisbat kuls, were badhekaris, *i.e.*, men who came from other villages to cultivate the lands of Ambegaum. He contrasted the old system, under which the tenants paid a high rent but one proportionate to the actual produce of their lands, with the present system, accompanied by harassing litigation and continual ejectments, attachments and sales.

Working of khoti phaida.

Mr. Elphinston illustrated the working of khoti phaida. It seems that the khots have been allowed to take the Government assessment half in cash and half in grain, and the 'phaida' in grain. Thus in 1872 the full bazaar price of a maund of rice was Rs. 1-12-0. A ryot, then, whose land is assessed at one Rupee, and

whose total payment, therefore, including khoti phaida, would be represented by Rs. 1-8-0, would in reality pay rice equivalent to Rs. 1-12-0 *plus* eight annas cash, or total Rs. 2-4-0, of which the khot would pay to Government Rs. 1, retaining Rs. 1-4-0, or 125 per cent., as his profit. A dharekari for the same land would have paid one Rupee. Mr. Elphinston concluded by recommending that where the Government assessment and khoti profits levied from poor cultivators with no reserve capital for bad seasons are fixed unalterably, it is very desirable to fix the standard of assessment much lower than need be done when the dmeand is only a portion of the crop.

Necessity for legislation shown by Mr. Havelock.

The history of the various opinions on khoti tenure may well be concluded by reference to a memorandum drawn up by the Revenue Commissioner, No. 1579, 28th April 1873, regarding a Rent Bill which had been prepared by the Revenue Commissioner N. D. in 1868. Mr. Havelock thought that legislation was urgently needed in Ratnagiri, as the survey operations in that district were being completely paralysed. "It will not be a matter of surprise that the enforcement of the measures unpalatable to the khots has produced, in many instances, a feeling of bitter animosity between the khots and their tenants, wherever the latter have endeavoured to hold their own against their late masters, and has, on the other hand, often united both parties against Government, when the tenants preferred to remain in their former state of dependence rather than accept the responsibility devolving on the pseudo-occupancy given under the survey to the khot-nisbat tenants. It is hardly possible to exaggerate the feeling of distrust caused among all classes by the sale of khot-nisbat occupancies, sometimes in distraint for the khot, sometimes in distraint for Government, and at other times on account of collusive refusal on the part of the tenants to pay khot-nisbat profits, to cover a transfer by distraint to the khot in opposition to the efforts of the Survey Officers to keep the land from reverting to the khot." Mr. Havelock gives an instance of the Survey and Revenue authorities preventing a well-intended effort by the khots and their tenants in the village of Goodgeh (Dapuli) to return to the old state of things by amicable settlement. Mr. Havelock thought that the object of Government, in limiting the demand of the khot, should be confined to giving him assistance only to the amount fixed, but not to interfere with any private agreements, which it is impossible to regulate.

Conclusion.

It now only remains to note briefly the conclusions which are arrived at from a perusal of the preceding pages. The history of the subject has been traced, showing the succession of facts and of opinions expressed by officers, and of the various measures introduced by Government.

Difference between watandar and non-watandar khots.

Originally there must have been a difference between watandar and non-watandar khots. The question whether that difference has not ceased to exist, owing to the British Government having for fifty years treated all khots alike, has not been entered upon in this enquiry, which is concerned solely with watandar khots. But the question is one which evidently demands an answer when measures are introduced applying generally to the khoti tenure. Otherwise there is a danger of arguments, that apply solely to the one class, being used in reference to the other.

Position of the khots.

In the first years of the British administration of the district all the khots were treated as absolute proprietors of their villages. Subsequently, the opinion of some officers was that the khots had no proprietary rights in the lands of their villages. Now it is indubitably established that a khot's interest in his village is limited, not absolute; that he possesses in some measure a proprietary right; in fact that he is an "occupant," with all the rights and liabilities appertaining to such a status.

Position of the tenants.

In the earliest years of the British Government in the district the opinion was that, except dharekaris, all cultivators were the khots' tenants-at-will. At that time our officers were not perfectly acquainted with the tenures of the district, and had mostly to depend upon information given by the khots themselves. Subsequently, the position of the watandar tenants was recognised, *i.e.*, those cultivators who are of as old standing in the village as the khot himself, and possess rights of permanent occupancy. It is now evident that to this class must be added those tenants, who, though not watandars, have been granted by the khot rights of permanent tenancy, a fact which may be presumed from length of occupation, from the tenant having expended money on improvements, and so on. Two errors must be avoided: on the one hand the idea that length of possession *per se* gives a tenant a title to permanent occupancy; on the other, the idea that a khoti tenant naturally possesses a right of permanent tenancy, depending neither on the will of the khot nor on the length of his possession. Such ideas are at variance with the admitted origin of the khoti tenure, and invade the rights of the khots as superior holders. In each case it must be a question of evidence whether a khoti tenant possesses rights of permanent occupancy. It naturally fol-

lows that those tenants, who are found not to possess those rights, must be the khots' tenants-at-will, *i.e.*, yearly or for a term of years.

Object of a survey.

From the earliest times most of our officers seem to have been impressed with the bad effects of the khoti system as tending to keep the ryots in a depressed state, and they continually brought before Government the necessity of a survey, the main object of which should be to define that which has hitherto been undefined, and thus prevent the khots from encroaching on the rights of the cultivators.

Settlement proposed by Captain Wingate.

Nothing was accomplished by Lieutenant Dowell's survey in 1829, more than the collection of a mass of information. Captain Wingate's plan in 1851 was to make the holders of rice and garden lands 'occupants,' granting portions of the warkas land (which he considered common property), such grants to be treated as the rice lands. In consideration of the loss of privilege, and possibly of profit too, the khots were to receive certain compensation.

Settlement proposed by Colonel Francis.

In 1859 Colonel Francis considered that the above settlement was too sweeping in its measures, and proposed a plan which eventually went much further. According to the present survey settlement practically every tenant (whether permanent or not) is made the occupant of his fields which are entered in his name. It stands to reason that if a tenant-at-will is changed into an 'occupant,' *i.e.*, one who cannot be ejected as long as he pays a rental fixed by the Survey Officers, the khot's rights must be invaded. The settlement proposed by Colonel Francis did not provide for any compensation to the khots.

Opposition of the khots.

It is thus easy to understand the intense opposition with which the khots have met the survey operations. From the earliest times the entry (in the Government records) of a field in the owner's name has been the chief mark of proprietorship. But the chief object of the present survey (as was that of Captain Wingate's) is to enter the fields in the cultivators' names.

State of the district.

There is no need to describe at length the present state of the district. Not only are nearly all the surveyed khoti villages under attachment, and suits upon suits are filed against the Collector and the Survey Officers, but an intense feeling of enmity has been stirred up between the khots and their ryots. Hundreds of suits are brought by the khots against their tenants merely on account of the survey.

Inconsistency and inadequacy of the law.

But this is not all. However much one might regret that the ryots had been benefited at the expense of the khots, still if the Survey Officers and the ryots had a law on which they could rely, the matter would be comparatively easy. This not the case. It is not necessary to repeat at length the history of Sections 37 and

38 of Bombay Act I. of 1865; but it has been amply shown that the law is both inconsistent and inadequate. The Survey Act was passed to legalise the ryotwar settlement, which had been carried out according to the famous "Joint Report Rules." These rules professedly referred to the Deccan and Southern Maratha Country, and not to the districts below the ghats. The Act was drawn up, interpretation clause framed, &c., according to these rules. The definition of the word 'tenant' (Section 2, Clause 2) applied exactly to a ryotwar settlement. It was distinctly stated by the framers of the Act that the Survey Officer interfered with no one's rights, and did not decide upon questions of title. *Subsequently* Sections 37, 38 were introduced so as to make the Act applicable to a khotwar settlement, and though it was even then distinctly stated that Survey Officers were not to decide upon questions affecting landed and other interests, yet it was also contended that it would be easy for the Survey Officer to decide by local enquiry which of the khots' tenants were tenants-at-will, and which were permanent occupants possessing a higher interest in the soil than that of tenants-at-will! . These and other inconsistencies abound in the two sections. The Survey Officer is in a most anomalous position. His proceedings must be illegal or unjust, or both illegal and unjust.

Difficulty regarding warkas.

There is another difficulty in the present settlement, and that is as regards warkas land. Mr. Dunlop wrote in 1822—"Warkas frequently belongs to particular cultivators as much as batty ground." This also seems to have been the view taken by Lieutenant Dowell in 1829. But in 1852 Lieutenant Kemball wrote that on the warkas he could not understand that the Kunbis had any defined rights; and in 1859 Colonel Francis wrote that he could not meet with any case in the Tanna Districts of ryots enjoying the rights Lieutenant Dowell assigned to them in some parts of Ratnagiri. If not in Tanna, then *a fortiori* not in Ratnagiri, where the khots were more powerful. No doubt in this respect the khots have been encroaching upon the rights of the cultivators, and now in some cases it must be difficult to decide whether a ryot is a permanent occupant of warkas land. In the present settlement this difficulty is overcome by considering every cultivator of every piece of warkas an "occupant"; but this only leads to a still greater difficulty, *i.e.*, with regard to the *measurement* of warkas. In 1855 Mr. D'Oyly showed the difficulties connected with this question; and Colonel Francis now admits the impossibility of accurately measuring and demarcating every minute portion of warkas. The solution of the difficulty would seem to be in measuring in detail merely the holdings of *bonâ fide* permanent tenants, and measuring the rest *en bloc*, and entering it in the name of the khot.

In conclusion, it would seem that a settlement to be fair to all parties should embrace the following points :— Outline of a proposed settlement.

(1.) Legal authority to be given to the Survey and Settlement Officers. Instead of the Survey Officers never deciding questions affecting landed interests, they should have full power to settle which land is dhara, and which khoti, which land is held by permanent tenants, and which not.

(2.) The fields to be entered in the names of the khots, the names of the permanent tenants only being added as cultivators with rights of occupancy.

(3.) The Survey Officers to fix the rental, beyond which the khots may not demand from permanent tenants.

(4.) If this be fixed in the case of cultivators hitherto tenants-at-will, then compensation to be given to the khots.

(5.) The abolition of "khoti phaida," which is unjust in its origin, and burdensome in its operation.

Whatever may be the form of settlement, it should never be forgotten that watandar khots have important rights, which should not be taken away without compensation, and that some of the cultivators in khoti villages are purely tenants-at-will. The object of the present enquiry was to throw light upon these points, and this object, it is hoped, has been attained.

Appendix.

Government have now under consideration a plan of settlement for khoti villages, which will be fair to all parties, and remove the various difficulties that have arisen. When these measures have been matured they will form a suitable appendix to the preceding pages.

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